THE

MADRAS LAW JOURNAL

II] JULY [1965

THE LATE SRI P. RAJAGOPALAN.

When towards the end of April 1961 Sri P. Rajagopalan, retired as a Judge of the High Court after a tenure of thirteen years on the Bench few could have imagined that he would pass away from our midst so soon. His eminence as a Judge both in regard to administration as well as judicial work and his great social qualities had elicited a chorus of tributes on that occasion and very few judges had carried into their retirement so much of esteem, goodwill and affection as the late Sri Rajagopalan. It was expected that his services would be available for a long time and would be availed of in the cause of the country and the public. It was an irony of fate that on the day he was expected to assume charge as Chairman, Railway Rates Tribunal, Sri Rajagopalan had a date with death. To the public at large, and to the members of the legal fraternity in particular his sudden demise has come as a rude shock though as Shakespeare had said " death, a necessary end, will come when it will come."

Life is not long enough to achieve perfect answers and the Judge has not the freedom to experiment that the scientist has in his laboratory. While statesmen may leave the imprint of their thoughts and personality on the life and development of the country a Judge can achieve eminence only by his qualities as a Judge within the traditions and limitations surrounding judicial office. A Mansfield or Marshall may achieve an enduring place in history by pioneering work, boldness of outlook, imaginative interpretation and display of judicial valour. But that can only seldom happen. In moderen conditions of life a Judge achieves eminence by his passion to do justice, by his patience and receptivity to arguments, by his understanding, and by his awareness of the spirit of his age and the need to respond to it. The late Sri Rajagopalan had won a great reputation as Judge by his unfailing courtesy and patience, thoroughness and good humour. He had made significant contributions to all branches of the law, and the Law Reports and Journals bear testimony to his erudition, close reasoning and lucid presentation.

Sri Rajagopalan was a firm believer in the important role which the lawyer could play even in a Welfare State with socialistic ideals. On the eve of his retirement, he observed : " The lawyer's right to assist and the citizen's right to avail himself of that assistance should, in my humble opinion, be in no way fettered or shackled. Whether law is administered by Courts or by Tribunals or by Executive Officers the need for the lawyer and his services and his assistance are the same and I hope that that will be realised more and more by the other two wings of the State, the Legis-

lature and the Executive." It is a sad commentary that this expression of mature experience remains unheeded.

The late Sri Rajagopalan had played a notable part in the toning up of the subordinate judiciary and in all matters of administration. He was intimately associated with the scheme for the separation of the Judiciary from the Executive and he was responsible for the compilation of the Manual of Instructions for the Guidance of the Stipendiary Magistrates. The successful working of the scheme in Madras is in no small measure due to him.

Sri Rajagopalan had cultivated social qualities as a fine art. He was a most "clubbable man". He was closely associated with various clubs in the City like the Mylapore Club, the Cosmopolitan Club, the Madras Cricket Club and various other bodies. His friends were many and he put everyone at ease. It was almost an article of faith with him not to allow his own personal worries to obtrude into the atmosphere which he was anxious should prevail round about him.

Sri Rajagopalan will be remembered for a long time for all his great qualities, and work well and truly done.

May his soul rest in peace!

S. Venkataraman.

A SAHRIDAYA.

In the death of Sri P. Rajagopalan, retired Judge of Madras High Court, on Monday, the 21st of June, we have lost not only one who was a great and good Judge but a gem of a man. The glowing tributes paid to him by the Bench and the Bar at the Madras High Court bear ample testimony to his work and worth.

I would rather therefore dwell on his quality as a man. Even more than his innate kindness, courtesy, patience and forbearance, his steadfast loyalty, long and sustaining friendships, the one quality which stood out among all others was his generosity of mind and genuine fellow feeling. He always liked to look at the good points in others rather than on their failings and often went out of his way, unasked, to render help to those in trouble. He could never dream of hurting anyone's feelings. His kind and encouraging words were a balm to several in distress. It is no wonder therefore he was the centre of affection and love to so many in several walks of life and work. In his loss not only have his large family and wide circle of friends lost a loving parent, a wise friend and a practical guide, but the community at large, a very humane person who exuded peace and goodwill all round—a true Sahridaya.

May his soul rest in peace!

T. V. Viswanatha Aiyar.

REFERENCE IN HIGH COURT.

A touching reference was made on 22nd June, 1965, in the First Court presided over by His Lordship Sri P. Chandra Reddi, *Chief Justice* and Sri Justice M. Natesan when tributes were paid to the Late Sri Rajagopalan by the Chief Justice and the Advocate-General Sri N. Krishnaswami Reddi. A reference was also made in the Chief Presidency Magistrate's Court touching the death of Sri P. Rajagopalan.

A CASE FOR AMENDMENT OF SECTION 16 OF THE HINDU MARRIAGE ACT.

By

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Marriage and sonship constitute some of the unique chapters in the *litera leges* of ancient Hindu law. Marriage is necessarily the basis of social organization and the foundation of important legal rights and obligations. Ancient Hindu law treated marriage as a sacrament. Marriage was a prime necessity for that alone could enable a person to discharge properly his religious and secular obligations. The ancient Hindu law had many points of merit but there were some drawbacks also, *e.g.*, a Hindu male could marry another wife or wives although he had a wife living. It had always been extremely unfortunate for a child the putative marriage of whose parents is null and void. These among many other matters called for substantial changes in the Hindu law of marriages.

A stage had been reached when codification of the law of marriage had become virtually indispensable. Section 16[1] of the Hindu Marriage Act perhaps was intended to confer legitimacy on unfortunate children of void and voidable marriages. This is a salutary rule based perhaps on the metaphor that " there are no illegitimate children, it is the parents who are illegitimate". The sins of parents should not be visited on the heads of their children despite the saying that they are so visited. To save such children as are conceived between the solemnization of such a void or voidable marriage and the passing of a decree of nullity in respect thereof, from the stamp of illegitimacy and the resultant disabilities, section 16 of the Hindu Marriage Act deems and declares such children to be legitimate by a fiction of law. The section has, however, been so unhappily worded and has created a great deal of confusion which is apparent from the different interpretation put by the different writers on Hindu law of marriage and the Courts.

One of the views expressed is that section 16 applies to both voidable as well as void marriages. Mulla's Commentator is of this view[2]. To quote his own words, " The persent section also states that as regards children of a marriage which is void under section 11 and declared by the Court to be null and void, the decree is to be treated as if it were only for dissolution of the marriage by divorce and the children born of such marriage to be deemed to be the legitimate children of the parents for all intents and purposes subject to the rule laid down in the proviso and this is to be the result notwithstanding the decree of nullity that may be passed by the Court. A marriage though solemnized does not fulfil any of the three conditions mentioned in section 11 is void *ipso jure* whether any proceeding to declare its nullity is adopted or not. No difficulty can arise where such proceeding is adopted and the marriage is annulled by the Court because the children born of such marriage are by operation of this section to be deemed to be legitimate children of the parents for all intents and purposes except that by virtue of the proviso to the section they cannot claim any rights in or over property of any person other than the parents."

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1. The relevant part of section 16 of the Hindu Marriage Act, 1955 reads :—" Where a decree of nullity is granted in respect of any marriage under section 11 or section 12, any child begotten or conceived before the decree is made who would have been the legitimate child of the parties to the marriage if it had been dissolved instead of having been declared null and void or annulled by a decree of nullity shall be deemed to be their legitimate child notwithstanding the decree of nullity :

Provided that.........."

2. Mulla : Principles of Hindu Law (12th Edn.), pp. 861-62.

But question may arise whether the rule laid down in the section can apply in case of children of such void marriages when no proceedings had been adopted and there was no decree passed by the Court. It would be suggested that the operation of this section is confined only to cases where any proceeding had been taken under the Act.

The Legislature has adopted in this section the language of section 9 of the (English) Matrimonial Causes Act, 1950, and section 26 of the (Indian) Special Marriage Act, 1954. Section 9 of the (English) Matrimonial Causes Act, 1950, reads: "Where a decree of nullity is granted in respect of a voidable marriage, any child ....of the parties to the marriage................at the date of the decree shall be deemed to be their legitimate child notwithstanding the annulment."

This section 9 of the English Act purported to be a substitute for section 7 (2) of the earlier English Act of 1947 which read : "Any child born of a marriage avoided pursuant to paragraph (*b*) or (*c*)..............shall be legitimate child of the parties thereto notwithstanding that the marriage is so avoided."

Both the two sections of the English Act, confine the relief of legitimacy to children born of voidable marriages, and section 9 of the English Act made it a further requisite that a decree of nullity should be granted in regard to such a voidable marriage before legitimacy can be statutorily conferred on the children. To complete the reference to the English enactments, on this question of legitimacy, there is also an enactment, Legitimacy Act, 1959, section 2 of which provides that the child of a void marriage, whether born before or after the commencement of the Act, shall be treated as the legitimate child of his parents if at the time of the act of intercourse resulting in the birth, both or either party reasonably believed that the marriage was valid. The Indian Legislature, however, seems to have decided to extend the benefit of statutory legitimacy, to children born also of void marriages but retained the pre-requisite recognised in section 9 of the English Act *viz*., the passing of a decree of nullity before this statutory benefit can be conferred on the children. The language used in the English Act in the context of a voidable marriage has been borrowed, but the Legislature instead of verbally adopting in the present section the provision of the English enactment which is expressed in language appropriate to the case only of a voidable marriage should have stated the rule differently if it was the intention to enact that children born of a marriage solemnized but void under section 11 were to be deemed to be the legitimate children of the parents and that too whether any proceeding for annulment of the marriage had been adopted or not. The object of the Legislature it seems was to see that where a marriage was in fact solemnized but was void on any of the three grounds mentioned in section 11 the children of such marriage should not be bastardised whether any such proceeding had or not been adopted or any decree passed or not. It would, however, be seen from the language employed that while children born of such marriage will be deemed to be the legitimate children of the parents if a decree of nullity of marriage had been granted in respect of the marriage under section 11, but they will be illegitimate children if no proceeding had been adopted by any of the parents to have the marriage declared void. This is an anomalous and startling position which could hardly have been contemplated. This is a *casus omissus* which the Courts cannot reach and no canon of construction permits the Court to supply the lacuna in the statute ; for, as has been observed by Ramkrishnan, J., in *Gowri Ammal and another* v. *Thulasi Ammal and another*[3], "where the statute defines the limits for the purpose of the grant of benefit of legitimacy to children born of void and voidable marriage in a particular way, the Courts are bound to give effect to such limitation without travelling outside those limits on a presumed intention of the Legislature, however great the hardship might be to the parties". It is obvious that the obtaining of a decree of nullity as a pre-requisite to the grant of legitimacy to children, under section 16 is anomalous, and can work a great deal of hardship in some cases. Void marriages under section 5 of the Hindu Marriage Act cover

3. A.I.R. 1962 Mad. 510.

polygamous marriages; marriages within prohibited degrees and sapinda marriages. Many couples who have married in contravention of these provisions would not have cared to go to the Court in their life-time to get their marriages annulled. The result is that their children being illegitimate will be deprived of succession to property, in a suit after the life-time of the parents at the instance of a third party.

But if for any reason, the couples in their life-time decide to place the interest of their children above their own, and take the trouble of going to the matrimonial Court and obtain a decree of nullity in regard to their marriage, the children are benefited. In many cases the concerned couples would not have gone to the Courts in their life-time with the result that the benefit conferred under section 16 on their children would become illusory. Further, for a decree of nullity under section 11 or section 12 a petition has to be presented by either party to the marriage. It would, therefore, follow that after the death of one of the spouses, a decree of nullity cannot be obtained. It will also, not be possible to get a decree of nullity in respect of a voidable marriage after the death of one or both the spouses because the right to avoid a marriage is given only to the parties to the marriage. On the other hand, in the case of a marriage which is *ipso jure* void under section 11, in a collateral dispute relating to the succession to the property between the heirs of the parties to the marriage, an ordinary civil Court of competent jurisdiction, other than a matrimonial Court, can give a decision that the marriage was a void one but without passing a decree of nullity of the marriage. In such a case, section 16 of the Act cannot be applied. The children will not get the benefit of legitimacy and will also lose the right to share in the property of their parents.[4]

The view that section 16 of the Hindu Marriage Act applies to voidable as well as void marriages has been stated to be impossible by Prof. Derrett.[5] His view is that by an unfortunate slip (although he does not explain it) the wording of section 26 of the Special Marriage Act was copied, in part in section 16 of the Hindu Marriage Act, with the result that children of void marriages solemnized on or after 18th May, 1955, appear to be capable of being relieved against total bastardization. This, however, is impossible, and the true effect of the section is to give a qualified statutory legitimacy to children begotten or born before the nullity decree to the wife whose marriage was voidable. Prof. Derrett has stated that his view is supported by a judgment of Punjab High Court in *Smt. Kanwaljit* v. *N. K. Singh*.[6] The single Judge in that case observed, "The marriage being void and to such a marriage the provisions of section 16 of the Hindu Marriage Act being not applicable, the children of such a marriage must be held to be illegitimate." Children of persons who marry bigamously or who are within the prohibited degrees are outside the scope of this relief since they would not have been "legitimate children of the parties to the marriage if it had been dissolved instead of having been declared null and void or annulled by a decree of nullity" for a void marriage cannot be dissolved. This according to Prof. Derrett disposes of the contention that has been made that as decrees granted under section 11 are specifically mentioned in section 16 void marriages must also be contemplated. He says, "In fact those embarrassing words are present as a result of the mere copying of section 26 of the Special Marriage Act where in fact impotence is a ground for a decree declaratory of nullity *ab initio*, so that the anomaly was there (alone) justified."[7] This is, however, not at all clear, how this was justified even there. Even then, it has to be admitted that an important point has been raised *viz.*, reference to void marriage cannot be reconciled with the quali-

4. A.I.R. 1962 Mad. 512.

5. J. Duncan M. Derrett: Introduction to Modern Hindu Law, p. 195.

6. A.I.R. 1961 Punjab 331 at page 333. It was observed, "The combined reading of these provisions (sections 11, 12 and 5) leaves no manner of doubt that the marriage in the present case having been performed or solemnized before the commencement of the Hindu Marriage Act cannot be declared void under section 11 of this Act" and it is possibly the reason that section 16 was held to be not applicable as decree of nullity under section 11 or 12 is a condition precedent to the application of section 16 of the Hindu Marriage Act.

7. *Ibid*, p. 196.

fying words, "who would have been the legitimate child of the parties to the marriage if it had been dissolved................".

Objections on purely moral grounds have also been raised against including of void marriage in section 16. Shri Saxena[8] has observed : "In declaring legitimate the children born of an invalid and void wedlock, the Act goes beyond all canons of law, and in effect legalizes concubinage. The argument in favour of this provision may be that the children are not responsible for their birth outside a valid wedlock ; the same argument applies with equal force to children born of adultery or rape. Why not go the whole hog and declare all bastards also legitimate and remove the stigma of illegitimacy altogether from the law applicable to Hindus?"

While indicating the effect of section 16 Shri Saxena has gone to the extent of saying that the provisions of section 112 of the Evidence Act would apply to void marriages also.[9] This view is, however, not sound for the simple reason that section 112 applies to only 'valid' marriages and the effect of section 16 is to 'legitimatise' the children not to validate the void marriage.[10]

A view has also been put forward that section 16 does not save all illegitimate children but "only those children of void marriages who were conceived and begotten after the solemnization of the marriage and before a decree of nullity under section 11 had been passed. These children although illegitimate shall be deemed to be their legitimate children, notwithstanding the decree of nullity. In their anxiety to avoid all controversy, the framers of the Act have extended this saving to the legitimate children (begotten and conceived during the period from solemnization of marriage to its being declared a nullity under section 12 of the Act) of voidable marriages."[11]

In other words, the main part of this section (section 16) saves the following children from being called illegitimate :—

(i) Such children of void marriages as have been conceived and begotten by the parties during wedlock.

(ii) Such children of void marriages as have been conceived and begotten by the parties during the period of solemnization of such marriage and its declaration of nullity under section 11.

All other children of void marriages will be illegitimate and are not saved by the provisions of section 16.

(iii) Such children of voidable marriages as have been conceived and begotten by the parties during wedlock will continue to be legitimate.

(iv) Such children of voidable marriages as have been conceived and begotten by the parties during the period between solemnizaion of such marriage and its declaration of nullity under section 12 of the Act.

All other children of voidable marriages will be illegitimate and are not saved by this section. It may again be emphasised that no saving was necessary for children of the two categories mentioned above in the case of voidable marriages. This classification as made by Shri Shiv Gopal is not at all required because it is implicit and appears superfluous. A reference to it has been made with the sole purpose of indicating the confusion that section 16 of the Hindu Marriage Act is capable of creating.

If the real purpose of the Legislature was to legitimatise the children of void marriages, then, the use of the qualifiying words "who would have been the *legitimate* child of the parties to the marriage if it had been dissolved instead of having been

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8. K. P. Saxena : Commentaries on Hindu Marriage Act, 1955 (Third Edition), p. 32.

9. K. P. Saxena : Commentaries on Hindu Marriage Act, 1955 (Third Edition), p. 308.

10. Also see observations in A.I.R. 1962 Mad. 510 (cited at p. 3).

11. The Hindu Code (2nd Edn.) by Siva Gopal, p. 373.

declared null and void" is meaningless, because the intended sense would be more clear without these words :

"Where a decree of nullity is granted in respect of any marriage under section 11 or section 12 any child begotten or conceived before the decree is made shall be deemed to be a legitimate child of the parties to the marriage notwithstanding the decree of nullity................"

The precise manner in which the anomaly should be rectified will be of course for the Legislature to consider in response to public opinion and sentiments among the Hindus regard being also had to the decisions of the various High Courts. But what has been said above is sufficient to indicate the immediate necessity of a suitable amendment of section 16 of the Hindu Marriage Act.

BOOK REVIEWS.

COMPENDIUM OF WORDS AND PHRASES USED IN BUILDING CONTRACTS compiled by *Bhagwan Dass Virmani*. Publishers, Engineering Law Publications of India, 308, Rajendra Nagar, Lucknow. Price Rs. 12-50 nP.

With the rapid industrialisation of rural areas in our country in the last ten to fifteen years there has been and is a cry for more and more houses. Building houses has now become one of the main concerns of the Government to give shelters in expanding areas to workers. There has of late come into existence a number of agencies both Governmental and quasi-Governmental like Housing Boards. And these agencies in their turn give contracts to private individuals and public bodies to construct houses. Building contracts vary to a good extent from commercial and mercantile contracts in form and contents. The basic principle underlying may be the same but in form and substance it varies. Hence this form of contract is modern to our country. In a building contract there are for instance a number of agencies like Engineers, Architects, Quantity Surveyors, Inspectors of Works and others. In form and substance there are these factors like—*Abandonment of works, Bill of quantities, Certificate of Engineer or Architect, Extension of time for completion, Extras, Variation, Materials used in the building purposes, Lump sum or entire contract, Progress certificates*—to mention only a very few. It is but necessary that all those who have anything to do with these kinds of contracts should be well conversant with them in their own interests. There are hundreds of these words and phrases, in use in this line. There was no book to which one can refer when necessity arises to understand their nature and meaning. The author Sri Bhagwan Dass Virmani has supplied this want by the publication under review.

About 250 to 300 words and phrases have been compiled in alphabetical order and their meanings, explanations and implications are given by the author. It is a laborious task and the author has spared no pains to make it a success. Himself a Retired Surveyor of Works the author has practical experience in this line and that has stood him in good stead in the compilation. In addition to this the book contains three Appendices, *viz.*, (1) Notes on specification writing; (2) Hints on Preparation of Bills of Quantities and last but not the least; (3) Glossary of legal terms all of which go to add to the value of the work. We congratulate the author on this excellent compilation and we are sure all for whom it is intended like Engineering Students Engineers, Auditors, and Contractors would be benefited greatly by it.

U.S.S.R. SUPREME COURT.

By

VASILY KULIKOV,

First Vice-Chairman of the U.S.S.R. Supreme Court.

[The author of this article is giving here the composition and the working of the Supreme Court of the U.S.S.R. He notes in this connection that crime rate in the U.S.S.R. has sharply reduced and the unattainable goal of complete liquidation of crime does not look beyond reach now.]

The Supreme Court of the U.S.S.R. is the highest judicial organ in the country. It is elected by the Parliament—the U.S.S.R. Supreme Soviet for a term of five years. The present members of the Supreme Court were elected in April, 1962.

The supreme judicial organ of the country consists of the Chairman, two Vice-Chairmen, 13 members of the Supreme Court and 45 People's Assessors. The Chairmen of the Supreme Courts of the 15 Union Republics are also members of the U.S S.R. upreme Court. Their participation in the work of the U.S.S.R. Supreme Court guarantees greater consideration for the interests and national peculiarities of the Union Republics, and strengthens the ties between the U.S.S.R. Supreme Court and the lower Courts.

The judicial activities of the U.S.S.R. Supreme Court are discharged by the Collegium for civil cases, the Collegium for criminal cases, the Military Collegium and the Plenary Meeting.

MAIN FUNCTIONS.

The main function of the U.S.S.R. Supreme Court is to supervise the activities of all the lower judicial organs, to see that all Soviet laws, the Civil, Criminal and Procedural Codes are correctly applied.

The Collegiums for civil and criminal cases of the Supreme Court consider the appeals against decisions and sentences of the Supreme Courts of the Union Republics passed in violation of Union Legislation or the interests of other Union Republics.

The Military Collegium considers cassation appeals on the sentences of military tribunals, and the protests lodged by military procurators against the sentences of these tribunals and other decisions made in violation of legal and procedural norms. These protests are lodged even in those cases when the sentence has entered into force and the convicted person did not make a cassation appeal.

The function of supervision over the activities of judicial organs is executed on a much greater scale by the Plenary Meeting of the U.S.S.R. Supreme Court. First of all the Plenary Meeting considers the appeals by the Chairman of the U.S.S.R. Supreme Court and the Procurator-General of the U.S.S.R. against sentences, decisions and findings of the Collegiums of the U.S.S.R. Supreme Court for civil and criminal cases.

The Plenary Meeting also studies the appeals of the Chairman of the U.S.S.R. Supreme Court and the U.S.S.R. Procurator-General against the erroneous decisions of the Presidiums and Plenary Meetings of the Supreme Courts of the Union Republics made in violation of Union Legislation or the interests of other Union

Republics. Analysing and generalising the materials and weeding out errors in Court proceedings, the Plenary Meeting instructs the Courts on questions of the application of laws, strives to see that no innocent person suffers from a judicial error, and that every criminal receives the punishment he deserves.

LIQUIDATION OF CRIME.

The Supreme Court carefully studies the hearing of cases by the Judicial Collegiums, the Supreme Courts of the Union and Autonomous Republics, the territorial, regional and people's Courts and studies Court statistics. By making a deep analysis of the work of the judicial organs the Supreme Court exposes errors in the interpretation and application of laws by lower Courts and gives them guiding instructions that help to avoid judicial errors.

The efforts of the U.S.S.R. Supreme Court are aimed at the further strengthening of socialist legality, at the complete eradication of crime. The crime rate was sharply reduced by the liquidation of exploitation of man by man, by the liquidation of unemployment and poverty. The rapid growth of the living and cultural standards of the entire population makes the task of the complete liquidation of crime practically attainable within the nearest future. This is testified by the rapid decrease in the number of crimes and convictions. For instance, the number of convictions in 1963 was 36.4 per cent less than in 1958. The crime rate is rapidly declining with every year.

The U.S.S.R. Supreme Court instructs the judicial organs to increase the struggle against socially dangerous crimes which still do occur, and at the same time constantly draws their attention to the need of a different approach to persons who have strayed because of circumstances from the straight and honest road and can reform without undergoing strict punishment.

PUBLIC CO-OPERATION.

The public is rendering the judiciary and the procurator's office increasing assistance in the struggle against violators of Soviet laws. In the U.S.S.R. collectives of working people can take into custody persons who have committed offences for the first time and of little social danger, and persons sentenced conditionally. This is done if the collective of working people requests permission to reform the offender. This practice has justified itself: 99·5 per cent of those taken into custody have fully reformed and did not commit any new offences. In the U.S.S.R. everything is done to save a person from falling into the precipice, everything is done to help him become a worthy citizen of the country.

In Soviet society the interests of the State do not conflict but fully coincide with the interests of the working people. That is why the protection by the judicial organs of the rights and interests of the State and society is at the same time a protection of the rights and interests of the working people, just as the protection of the rights and legitimate interests of citizens is at the same time a protection of the interests of the State of the whole people.

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BOOK REVIEW.

A Short Life of Sir C. Sankaran Nair, C.I.E., by the Hon'ble Sir *C. Madhavan Nair*, Bar.-at-Law, published by the author "Lynwood," 52, Kodambakkam High Road, Madras-34. (Price not stated).

Present-day people and those of the last generation would generally take for granted the great strides, the country has made in this period in the matter of the disappearance of the rigours of the caste system, growth and expansion of women's and university education and in short all that go to make a progressive society and believe that they have all come as a matter of course with the passage of time. But the fact is that all this is the result of the indefatigable labours and patient and hard work of far-sighted leaders the country had produced at the end of the last and the beginning of the present century. Among these leaders Sir C. Sankaran Nair's (1857-1934) name is one to be conjured with as it stands out prominently. His contribution to our progress, socially, politically, educationally, as an official and as a non-official is great and substantial. After a brilliant academic career Sir Sankaran Nair was an Apprentice under the then Advocate-General Sir Horatio Shephard who later became a Judge of our High Court. As an Apprentice while Sir Horatio was arguing a case in the High Court Sir Sankaran Nair was sitting by his side and helping him looking up references and giving him authorities, etc. After Sir Horatio had finished his argument one of the Judges observed that his Apprentice seemed to take a good deal of interest in the case and if he had no objection the Bench would like to hear the young man if he had anything to say. Sir Sankaran Nair rose equal to the occasion and argued the case in his own way while all the while his master was sitting by his side. Thus Sir Sankaran Nair had the unique honour of arguing a case before the High Court even while he was an Apprentice. Honours then came to him in quick succession. Government Pleader and Public Prosecutor, Advocate-General of the High Court all came to him unsolicited and unasked. As a practitioner we have it on the authority of a great leader, who prefers to remain incognito and who is believed to be Mr. Eardley Norton that "he would remember invariably their head notes, the lawyers who appeared in them and the Judges who decided them, with a brief summary of the arguments of the Counsel and of the reasoning of the judgments and would also often be able to say even the Court from which the matter came up to the High Court and the year of the decision and then it would be so easy to pick it".

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His Judgments in the well-known *Urlam case, Ashe murder case, Poondi murder case* to mention only a very few among many others stand out as monuments to his erudition, learning and knowledge of law.

As an ardent and earnest advocate of social reform his opinion was that by "judicial legislation" reforms can be effected. As an instance mention may be made of his decision in *Muthusami* v. *Masilamani* where he liberalised Hindu Law. As an educationist he was responsible for the appointment of Sadler Commission in 1917 against great difficulties when he was member-in charge of education in the Viceroy's Executive Council. It is on account of the recommendations made by the Sadler Commission that education in India came to be liberalised and the learned author of the book under review rightly observes that "Sir Sankaran Nair can well claim to have laid deep the foundation of modern university education in India on which his successors have built". (page 67.)

As a politician and administrator Sir Sankaran Nair is equally great and his work is constructive. His two minutes of dissent to the despatches of the Government of India from which copious quotations are extracted in the book reveal the intensity of his love for the freedom of the country and burning patriotism. He had the courage and the conviction to record in these minutes that "the Plague disturbance in the Bombay Presidency would not have been allowed to take place under any democratic or popular Government. The Tinnevelly riots and the murder of Mr. Ashe in the Madras Presidency were due to the latter's interference with Chidambaram Pillay's efforts to improve the lot of the mill hands and with the

Swadeshi Steam Navigation Company. This again would not have been feasible under the ordinary conditions of good Government. The occurrences in East Bengal which was the immediate cause of seditious and revolutionary movements also would have been practically impossible under a popular Government. (pages 76-77.)

He had the independence and the courage to lay the axe at the Government of the day as the cause of country's troubles.

The crowning act of his career was his resignation as a member of the Viceroy's Executive Council, a much coveted and sought after post in those days as a protest against continuance of Martial Law in the Punjab. With his inside knowledge he said in his book *Gandhi and Anarchy* " before the reform it was in the power of the Lt. Governor a single individual to commit the atrocities in the Punjab as we only know too well".

The individual mentioned being Sri Michael O'Dwyer who was the Lt. Governor of the Punjab then, commenced an action for libel against Sir Sankaran Nair in the London High Court. The defence was justification. The decision went against Sir Sankaran Nair. To India it came as a surprise and was to a certain extent the cause of our losing faith in the fairplay and rendering of impartial justice. Sir Sankaran Nair lost in England but gained in India.

In spite of his being a radical social reformer Sir Sankaran Nair was deeply religious and he worshipped at the altar of Sri Palani Andavar.

The above are the salient facts brought within one's reach in a neat little book by no less a person than Sir C. Madhavan Nair who is the nephew and son-in-law of Sir Sankaran Nair. Fortunately he is still with us and he had the benefit and advantage of personal knowledge and discussion of all the facts mentioned in the book. His relationship with Sir Sankaran Nair does not stand in the way of his giving a fair and impartial life of the great man based on documents. A perusal of the book is sure to bring to one s knowledge a little of our country's history in the beginning of the end of the British Rule in India. And Sir C. Madhavan Nair has done a great service in having brought out this book. The aim of the distinguished author as revealed in the Preface has been fully and completely achieved in the pages that follow it. An index would add greatly to the value of the book.

FORUM TO DECIDE INTERIM DISPUTES PENDING GRANT OF RYOTWARI PATTAS FOR INAM LANDS.

By

SRI A. S. KUPPUSWAMI

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The Madras Inam Estates (Abolition and Conversion into Ryotwari) Act, Madras Act XXVI of 1963 abolishes the Inam tenure and converts it into ryotwari in all the surviving Inam villages in the State, numbering nearly 1,500. The process of abolition commences with the publication of a Notification by the State Government bringing the Act into force in its entirety in the notified Inam village. The legal consequences of the Notification are set out in section 3 of the Act. They include the following :—

The entire Inam Estate stands transferred to and becomes vested in the State Government free from all encumbrances as from the notified date. In lieu of all his pre-existing rights in the Estate, the Inamdar is entitled only to such rights and privileges as are recognised or conferred on him by or under the Act. The pre-existing rights of the ryots against the Inamdar also cease and the ryots are also entitled only to such rights and privileges as are recognised or conferred on them by or under the Act. One such major right conferred by the Act is the right to a ryotwari patta under Chapter III of the Act. Sections 9 and 10 in Chapter III set out the terms and conditions governing the substantive rights of the Inamdar as well as the ryots to a title to a ryotwari patta for the lands. The Settlement Officer has to judicially decide the claims of the Inamdar and the ryots to the ryotwari patta under section 12 (1) of the Act. The claimant has to apply to the Settlement Officer under Rule 9 of the Rules under the Act within six months of the notified date in the prescribed form. The application has to set out the provision of law as well as a summary of the proposed evidence in columns 9 and 10. Rule 9 (5) provides for a public notice by the Settlement Officer to all interested persons to partake in the enquiry. The Settlement Officer has to give his decision after such an enquiry. The right to the patta as decided by the Settlement Officer takes retrospective effect as from the notified date. Section 12 (2) provides for an appeal from the Settlement Officer's decision to a Statutory Tribunal created by the Act. Under section 8 (2), each Tribunal shall consist of one person only, who shall be a Judicial Officer not below the rank of Subordinate Judge. Section 46 (1) provides for a further appeal from the Tribunal to a Special Appellate Tribunal consisting of two Judges of the High Court nominated from time to time by the Chief Justice in that behalf. Subject to the abovementioned appeals, the Settlement Officer's decision is final and it is not liable to be questioned in any Court of Law. *Vide* section 71. The decision of the Special Appellate Tribunal and subject to such decision, the decision of the Tribunal are also final under section 46 (4). The decision of the Special Appellate Tribunal and subject to it, the decision of the Tribunal are also binding on all persons claiming an interest in the Inam Estate. *Vide* section 46 (5). They are in the nature of Judgments *in rem.* Thus, the Settlement Officer, the Tribunal and the Special Appellate Tribunal form a self-contained three-tier special judicial forum, both original and appellate. The forum is created by the Act for giving a final decision on the right to ryotwari patta conferred by the Act, on the Inamdar or the ryot, as the case may be, in lieu of their pre-existing title to the land under the extinguished Inam tenure. The right to the patta takes retrospective effect as from the notified date which is the date of the termination of the Inam tenure in the village. This special judicial machinery is thus suitably designed for its purpose.

But an important subsidiary issue arises. It is not provided for in the Act. There is bound to be an interval of, say, a year, between the date of the application, for a ryotwari patta to the Settlement Officer under rule 9 of the Rules and his decision under section 12 (1). Disputes may arise between the contending parties in relation to the possession and enjoyment of the lands in the interval. There may also be charges of waste or damage to the land in the interval. A suitable forum must be available for the decision of these disputes. Which is the lawful forum ? Is it the Settlement Officer, who decides the title to the ryotwari patta or is it the Civil Court ?

The Settlement Officer cannot be claimed to be the lawful forum under the existing law.

No power to grant any interim relief by way of a temporary injunction or receivership or any other suitable interlocutory order is conferred on the Settlement Officer, in express terms, either under the Act or under the Rules. Such a power cannot be claimed as necessarily implied. The right in question, *viz.*, the right to a ryotwari patta as from the notified date is a new right created by the Statute. The Statute has not provided any special forum for the grant of relief for an injury to that right. It is settled law that in such a case, the aggrieved party can sue in the Civil Court. This falls under the second class of cases mentioned in the classical passage in the judgment of Willes, J. in *Wolverhampton New Water-Works Co.* v. *Hawkesford*[1].

The following is the relevant portion of the passage :

"There are three classes of cases in which a liability may be established founded upon a Statute......The second class of cases is where the Statute gives the right to sue merely, but provides no particular form of remedy, there. The party can only proceed by action at common law".

Thus it is clear that during the interval between the notified date and the date of the Settlement Officer's decision under section 12 (1), the forum for the grant of relief by way of injunction or otherwise as described above is the Civil Court.

But the Civil Court does not appear to be a proper forum for this limited purpose in view of the following:

I. The relief to be granted is in the nature of a temporary injunction or other suitable interlocutory order as under Order 39, Civil Procedure Code, or a receivership under Order 40, Civil Procedure Code. An original suit with its elaborate procedure is too expensive a remedy for this limited purpose.

II. The Civil Court has to decide the same issue as the Settlement Officer, *viz.*, the legal character of the land in question in reference to the two rival sections 9 and 10. If the land falls under section 9, the landholder gets the patta. If it falls under section 10, the ryot gets the patta. There is, however, a vital difference between the two judicial functionaries. The Settlement Officer decides the issue finally, subject to Appeal, after a full trial. The Civil Court decides the issue provisionally on a *prima facie* view, pending the Settlement Officer's decision. Both the trials will have to go on simultaneously. The documentary evidence will have to be tossed about from one forum to another. Witnesses will have to be examined by both the functionaries on the same issues. This is unnecessary duplication. It is avoidable waste of public time.

Thus the Settlement Officer is a more suitable forum than the Civil Court for this limited purpose.

It is necessary, in the interests of justice, to amend the law so as to empower the Settlement Officer, who decides the claims under section 12 (1) of the Act, to pass suitable interim orders under section 94 and Orders 39 and 40, Civil

1. (1859) 6 C.B.N.S. 336 at 356.

Procedure Code. Whether the Act has to be amended or a statutory rule issued under section 73 for the purpose will suffice has to be examined. It raises a separate issue.

The civil suit described above has nothing to do with dispute between rival landholder-claimants or disputes between rival ryot-claimants. It has also nothing to do with disputes between a landholder and his alienees, or disputes between a ryot and his alienees. Such disputes will continue to be decided by the Civil Court. They should not be mixed up with the special category of the extremely simple suits for temporary relief, pending Settlement Officer's decisions, as described above.

A Tribunal hearing an appeal from the Settlement Officer's decision under section 12 (2), and a Special Appellate Tribunal hearing a further appeal under section 46 are invested with the powers of a Civil Court under sections 8 (3) and 46(3), respectively. They have got jurisdiction to pass suitable interim orders in the interests of justice, in respect of the concerned lands pending appeal.

To sum up:

(*a*) A Settlement Officer, who functions as a special forum for the decision of claims for ryotwari patta under sections 9 and 10, as from the notified date, has no jurisdiction under the existing law to pass suitable orders for relief by way of temporary injunction, or order of receivership, or any other interlocutory order under Orders 29 and 40, Civil Procedure Code, in the interests of justice. A civil suit with its elaborate procedure has to be filed for the purpose.

(*b*) The simultaneous prosecution of a separate civil suit for interim relief as described above will cause serious inconvenience. It involves avoidable cost to the suitors.

(*c*) The law has to be amended empowering Settlement Officers, who decide claims under section 12, to pass suitable interim orders, in the interests of justice.

BOOK REVIEW*

GENERAL PRINCIPLES OF ENGLISH LAW.—by *P. W. D. Redmond*, Bar at Law—Published by Messrs. Macdonald and Evans Ltd., 8, John St., London W.C.1. Copies can be had at Messrs. Orient Longmans Ltd., 36-A, Mound Road, Madras-2. Price Rs. 10

The learned author, who is a Lecturer in Law at the City of London College is to be congratulated for the masterly way in which he has compressed and stated admirably in this little hand book of 300 pages the general principles of English Law, which has its source in Custom, Legislation, and Case-law.

The book is intended to be a self-contained course of tuition on the subject and can be used on its own or in conjunction with recommended text-books.

Intended primarily for use by students preparing for Banking, Accountancy Company, Building Society, Administration examinations this book is also meant for these who appear for Law examinations. The subject is divided into five parts *viz.*, (1) The English Legal System (2) Law of Contract, (3) The Law of Torts, (4) Law of Property and (5) Equity and each part contains a number of chapters and sections. Principle of law under each section is succintly and clearly enunciated wherever necessary with reference to decided English cases. By way of illustration we may cite the subject of part performance. While on this the author ends the section with this note "do not confuse the equitable doctrine of part performance with the equitable remedy of specific performance which is a Court order commanding some one to perform a contract. Where part performance is proved the Court may make an order for specific performance". At the end of each Part there are Test Question Papers which will be found very useful. The book contains two Appendices—One on "Cheques and Bills of Exchange". and the other on "Examination Technique". The Chapter on Examination Technique will be found to be highly useful by the students, for it gives valuable hints as to how to tackle questions and to answer them and to solve problems. The task which the learned author has set before himself in writing this book *viz.*, that it should not be merely a standard text on elements of English Law but a self contained text book for the use of examinations going students has been well carried art. This task has been possible as it is written by a College Law Lecturer conversant with the students' difficulties and requirements. The book is in the M. & E Hand Book Series. The printing and the get up is excellent. The general editor and the author have done a good job.

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* Macdonald and Evans.

BOOK REVIEWS.

THE ART OF WRITING JUDGMENTS by *B. N. Chaudhuri*, published by The Law Book Company, Sardar Patel Marg, Post Box No. 4, Allahabad : 230 pages, 1963 Price Rs. 10.

The author's credentials to write the book are high, he being a retired District and Sessions Judge of experience and an Advocate. The Title given to the book is attractive. It deals in effect with how to judge, contents of judgment, and the method of writing it properly. The work consists of 3 parts exclusive of the Appendices. Part A consisting of 21 chapters deals with judgment in criminal cases traversing the entire field commencing with the prosecution case and ending with delivery of judgment. Part B is devoted to judgments in civil cases. Part C contains commentaries on the statutory provisions bearing on judgments extracted from the works of Sohoni, and Sanjiva Rao. Case-law has been noticed down to the date of publication.

'Judgment' spelt as 'Judgement' on the wrapper page of the book only seems to be accidental. The get-up of the book is satisfactory.

One can sincerely hope with the author that the work will prove useful for the task for which it is meant.

THE HINDU SUCCESSION ACT by *Sethi*, 3rd edition, 1963, revised by *T. P. Gopalakrishnan* and published by The Law Book Company, Sardar Patel Marg, Post Box No. 4, Allahabad-1. 312 pages, Price Rs. 12.

The Revising Author is not a novice to writing law books. He is an Advocate and experienced law teacher. That 3 editions of the book have been needed within 6 years shows the large demand for it. In addition to providing commentaries on the sections of the Act Part II gives a Historical Retrospect furnishing in Chapter VI the Law of Inheritence in England and the United States, and in Chapter VII the Mohammadan Law of Succession, as well, to facilitate comparative study. Extracts from the Indian Succussion Act are also given.

The Preface to the present edition states : "the exposition of the law is in a clear and orderly manner". This verdict should be taken from the Reader and Reviewer and is not for the Author.

A number of printing mistakes have crept in which with some care could have been avoided. For *e.g.*, On page 45 in line 13 'application' should be 'affiliation' in line 19, '*saison d'etre*' should be *raison d'etre*. On page 48, in line 4 '*lest*' should be '*est*'. On page 82 '*aurava*' should be '*aurasa*'.

Page 11 para 7 suggests that it is not desirable to have unlimited heritable relationship particularly in a welfare state. It may be noticed that in Muslim law which has favoured distribution of the inheritance among a number of persons there is no restriction of heritable relationship. On page 13 it is stated that the Act applies to all Hindus. The statement has not taken into account the provision in section 2 (2) that the Act shall not apply to Scheduled Tribes till the Central Government by notification in the Official Gazette otherwise declares. On page 105 it is stated that the Act lets in all uterine blood cognates also as heirs. One would wish that it is something more than as *ipse dixit* particularly in view of the pointed exclusion, of the uterine brother and uterine sister from the terms 'brother' and 'sister' in Class II heirs, and the restriction of a half-blood to consanguine blood.

On the whole, however, the book is a useful addition to he literature on the subject and is bound to be useful to law students and busy practitioners of law.

LAW OF SUCCESSION CERTIFICATE by *L. S. Sastri*, 3rd edition, 1963. Revised and enlarged by *H. G. Basu* and *S. K. Agrawal*, Advocates, Published by the Law Book Company, Sardar Patel Marg, Post Box No. 4, Allahabad. 182 pages, Price Rs. 8.

Proof of representative title is a condition precedent to recovery through Court of debts due from debtors of deceased persons. Among the various kinds of proof of such title one mode of proof is by the production of succession certificate. The law relating to this subject in India is contained in Part X of the Indian Succession Act of 1925. Succession for purposes of the Act may be both intestate or testamentary. It does not however include the passing of property by survivorship. In the latter case no succession certificate is needed. 'Debt' in the context of the Act includes a right to a liquidated amount and has been held to cover a claim for the return of certain ornaments of the deceased in the hands of the authorities.

The law relating to the subject has been carefully analysed and presented in a helpful form in all its aspects. Appendices setting out the texts of all enactments having a bearing on the subject are given. The present edition carries also model forms of various applications and bonds for security prevalent in the different States.

The book is bound to be of great help to busy practitioners of law.

PRINCIPLES AND PRECEDENTS OF CONVEYANCING DRAFTSMAN INTERPRETATION OF DEEDS AND DOCUMENTS by *G. L. Kothari*, 1963. Published by the Law Book Company, Sardar Patel Marg, Post Box No. 4. Allahabad. 1574 pages, Price Rs. 45.

Bacon once remarked that the greatest sophism of all sophisms is the equivocation and ambiguity of words. In a similar vein Shakespeare observed that words have become very rascals since bonds disgraced them. Legal draftsmanship, therefore, has always to aim at simplicity, clarity, uniformity of style and comprehensiveness. It has to be equal also to the challenging needs of the times in regard to the rapidly changing industrial, fiscal and socio-economical laws. Drafting has come to be one of the important functions of an Advocate's work. It is gratifying that the subject both in its theoretical as well as practical aspects is sought to be included as a part of the study of law in Colleges throughout India.

There are few good books on the subject produced in this country. The Author is an ex-Civil Judge and Advocate who has endeavoured to supply this need. The present work is therefore a welcome exposition. The bulk of the work covers conveyancing. Specimen forms and precedents are provided from the point of view of practical utility. The background materials forming a *sine qua non* for every draftsman and conveyancer like the law relating to stamp, registration etc., are also given.

Not all the forms given would fit in with present conditions. The forms, for instance, in Chapter X may not be quite appropriate in regard to modern Hindu adoptions, after the passing of the Hindu Adoptions and Maintenance Act, 1956. The specimen form refers to the performance of usual ceremonies. What actually requires mention is the giving and taking of the child in adoption with the requisite intention. Again whether a widow can now adopt to her husband on an authority given by him for the purpose is debateable since the policy of the Act seems to be that adoption can be ordinarily for onself only. Whether a bargain to provide an annuity or other gratification to its natural parents in view of the child being given in adoption could be enforced seems to have been answered in the negative in section 17 of that Act.

On the whole, the book will be a useful addition to the Library of every lawyer and to students of draftsmanship.

LAW OF EASEMENTS AND LICENSES by *Katiar*, 5th edition, 1963. Revised by *Mantha Ramamurti*, Advocate. Published by the Law Book Company Sardar Patel Marg, Allahabad. 809 pages, Price Rs. 27-50.

Easements constitute a fringe to property rather than property itself. The effect of an easement is crisply expressed that it legalises what otherwise would be a trespass or abates a nuisance. It is an indispensable adjunct to ordered enjoyment of

property. Gale, Goddard, Coulson, and Peacock are identified with standard works on the subject. In India Katiar's book as a critical commentary on the provisions of the Indian Easements Act has enjoyed a good reputation, as a lucid presentation of an intricate subject. It is gratifying therefore that the work has not been allowed to die after its author's demise. The Revising Author is not new to this type of work and has shown great thoroughness and industry in editing the book. All the important relevant decisions have been taken note of, sifted and examined whether English or Indian.

The Appendices contain *inter alia* extracts from various statutes like the Limitation Act of 1908 and the Specific Relief Act of 1887. These two Acts have now been replaced by the Limitation Act (XXXVI of 1963) and the Specific Relief Act, 1963 (XLVII of 1963). Evidently the present edition though also of 1963 had come out before the latter Acts had got into the statute book. Among the numerous Law Reports and Journals referred to it is curious that there is no reference to any relating to Andhra Pradesh.

The instant book can be confidently recommended for use by lawyers, judicial officers and students of law alike as a dependable guide on the subject of Easements and Licenses.

POLICE DAIRIES, STATEMENTS, REPORTS, INVESTIGATION AND ARREST by *K. Krishnamurthi*, Advocate, 1963. Published by the Law Book Company, Allahabad. 480 pages, Price Rs. 15.

Investigation by personnel authorised by law and enquiry by Courts of the results of such investigation form the two states in the administration of criminal law. The Criminal Procedure Code, the Evidence Act etc., contain a number of rules and injunctions bearing on these matters. The personal qualities of the investigators as well as his other skills and know-how count very much for the purpose. The Author has culled relevant and valuable information from acknowledged authorities on the different aspects of investigation and presented them in an orderly and lucid manner. The book makes highly interesting reading and is sure to be popular with lawyers and laymen alike.

LAW OF BAILS by *P. V. Ramakrishna*, 1963 : Published by the Law Book Company, Allahabad. 461 pages, Price Rs. 17-50.

Personal liberty is precious, and when taken away it has to be justified. The Constitution has taken note of it in the chapter on Fundamental Rights. Provisional or temporary relief in cases of alleged arbitrary arrest is afforded through bail. The writ of *habeas corpus* is another mode of seeking redress. The law relating to bail is scattered in the Criminal Procedure Code, and there are provisions in other enactments as well. A systematic and orderly exposition of the law on the matter is attempted by the Author who is a Judicial Officer. The concept of bail and its different aspects, the principles governing its grant, grant of bail by the Police, by the Magistrates, and by the Courts, bail under special enactments, bail under the Civil Procedure Code, release of first offenders have all been dealt with. A separate chapter on the writ of *habeas corpus* has also been furnished.

Sticklers for meticulous expression may prefer to have the title as the Law of Bail instead of Law of Bails.

To busy legal practitioners and judicial officers the book is bound to be of much assistance.

PROBATION OF OFFENDERS ACT AND RULES—CENTRAL AND STATES BY *S. C. Consul*, Advocate. Published by the Law Book Company, Allahabad. 428 pages, Price Rs. 15.

The aim of punishment is the end of punishment. Students of penology continue to differ in their approach to crime and punishment. Believers in the reformation of criminals and their rehabilitation have advocated the Probation System. The first statutory expression of it is to be found in section 562 of the Criminal Procedure Code. There is now the Central Probation of Offenders Act (XX of

1958). The Author has endeavoured to provide in this book useful commentaries on the provisions of the Act. The Appendices attached give the texts of enactments like the Suppression of Immoral Traffic Act, the Reformatory Schools Act and the Rules framed in the States. They also set out the Bombay, and Madras Probation of Offenders Acts and the U.P. First Offenders Act.

The book constitutes a welcome publication.

PREVENTION OF FOOD ADULTERATION ACT by *R. B. Sethi*, Advocate, 4th edition, 1963 ; Published by the Law Book Company, Allahabad : 436 pages, Price Rs. 15.

Adulteration of food stuffs is a growing menace to public health in the country and is threatening to become a fine art. If it has not been controlled it seems to be due not so much to lack of laws on the matter but to half-hearted and inefficient application of those laws. The observation of a learned Judge that " although the Act does prohibit the use of unwholesome or noxious adulterants its primary aspect is to safeguard the purse rather than the health of palate of the general public " brings out another aspect of the matter. In this book the Author has provided a running commentary on the Central Act relating to the subject—Prevention of Food Adulteration Act (XXXVII of 1954). The Appendices give the Food Adulteration Rules History of Food and Drug Adulteration Laws in Europe and the U.S.A. Special provisions relating to Milk, Test applied to Milk, Food Adulteration Rules (1958) of Bihar, Himachal Pradesh (1958) Mysore (1960) and the Punjab Rules of 1958. The book is a very helpful guide in regard to a subject which is of the utmost importance to the general public.

LAW OF BRIBERY AND CORRUPTION by *H. P. Varshni*, 2nd edition 1963 : Published by the Law Book Company, Allahabad. 411 pages, Price Rs. 15.

Bribery and Corruption are increasingly rampant and at all levels. Bribery ' curseth him that gives and him that takes '. The rules of evidence being what they are proof of corruption has become a difficult task. The Prevention of Corruption Act the Criminal Law Amendment Act etc. have no doubt tightened the law but not with much success. The Author is a retired District and Sessions Judge and he has endeavoured to give a clear picture of the law. The book is divided into 3 parts. Part I deals with bribery and corruption is general ; Part II covers bribery and corrupt practices at Elections ; and Part III is devoted to regulation of the conduct of public servants. The relevant statutes have been set out and commentaries provided. The book will be highly serviceable to lawyers as well as officers.

LAW OF FORGERIES COUNTERFEITING AND CHEATING by *Ram Lal Gupta*, Advocate, 1963. Published by the Law Book Company, Allahabad. 225 pages, Price Rs.10.

The offences dealt with are some of the deceitful practices that have grown *pari passu* with the growth of civilisation. The Author has endeavoured to give the substantive as well as the essential procedural law concerning each of these offences. Seven chapters are devoted each to forgery and counterfeiting and three to cheating. Information relating to comparison of fingerprints handwriting and type-script is also given. The Author's avowed aim is to provide a handy companian for day to day use containing what should be known in relation to these subjects. The Author has performed his task satisfactorily and we are sure that the Author's ' fond and reasonable hope' that the work deserves the approbation of the public is not misplaced.

OTHER BOOKS RECEIVED :—(1) The Fatal Accidents Act (XIII of 1855) by *Rajendranath Dwivedi*, Advocate, 1963 : 161 pages Price Rs. 8. and THE CATTLE TRESPASS ACT (I OF 1871) by *U. Singh, M.A., LL.B.*, 1963. 156 pages, Price Rs. 7., both published by the Law Book Company, Saradar Patel Marg, Post Box No. 4, Allahabad.

LEGISLATION AGAINST MONEY CIRCULATION

By

P. SHESHADRI, B. A., LL. M., *Junior Lecturer, College of Law, Osmania University.*

It is not infrequent in the present days for one to come across several schemes of money circulation which create an impression in the minds of the poorest section of the public that there is an opportunity for them to join the ranks of the wealthiest class. Soon they realise their folly when they find themselves utterly frustrated by the deceptive schemes which rob even their small savings. The place where the business of the circulation of the schemes is carried on has a sudden disappearance and leaves one to surmise about its existence. There is at present in vogue widespread prevalence of mushroom schemes of the following nature :—

1. Money circulation schemes.
2. Pay Re. 1 and get Rs. 500.
3. Lucky Money Scheme.
4. Earn easy money.

It is observable that the above schemes offer uncontrollable temptation to the needy and suffering public without any immediate remuneration. In addition to this, these schemes ultimately ruin many families shattering the domestic happiness and depriving many families of their minimum source of livelihood and compel them to lead a life of starvation. The Legislature has taken a very bold step to eradicate this social menace by introducing the Andhra Pradesh Money Scheme Gambling Prohibition Bill, 1965 (Bill No. XVIII of 1965) in the Andhra Pradesh Legislative Assembly on 6th August, 1965.

The policy of the Legislature as embodied in the above Bill is two-fold and can be stated as follows :—

1. To prohibit large scale gambling.
2. To save the people from ruinuous temptation.

The above legislation is to extend throughout the State of Andhra Pradesh. It seeks to give a retrospective operation to the provisions of this legislation by stating in section 1 that it shall be deemed to have come into force from 1st January, 1960. In my opinion this retrospective operation of the above legislation is to be construed only for the purposes of prohibiting such schemes and in no way to be invoked for punishing the offenders in respect of acts done prior to the actual enactment of this legislation, as otherwise it may result in the violation of Article 20 (1) of the Constitution which prohibits '*ex post facto* legislation'. This position requires clarification in the legislation.

Section 2 of the Bill prohibits the play or scheme or gambling in money without any immediate remuneration to the payee either in name of money schemes, 'pay small amount get huge amounts' or alike. In my humble opinion there must be an exhaustive definition in the legislation as to what is meant by 'immediate remuneration.' In the absence of any such definition this legislation may prove to be an unworkable piece of legislation. Further the substitution of the word "an offence" for the word "prohibited" may be appropriate.

Section 3 of the Bill provides that an offence under the Act is cognisable and punishable by a Magistrate of the First Class. Further it provides that the offence can be handled by a Police Officer not below the rank of the Inspector of Police. In my humble opinion the term "handled" is unhappily worded. It may be desirable to substitute the word, "investigated" for the words "handled." I also feel that the provision may be suitably altered so as to make it permissible for any Police

Officer to take cognizance of this offence. After all the intention of the proposed legislation is to prevent the money circulation schemes and not to prohibit only at the instance of the Inspector of Police.

Section 4 of the Bill provides for the trial of the offences under the Act. It states that only a Magistrate of the First Class can try such offence. It also provides for punishment of the offenders by imposing two years imprisonment and two thousand rupees fine in default further six months. The intention of the provision is to prescribe both imprisonment and fine mandatorily. This is clearly evident from the words, " *two years imprisonment and two thousand rupees fine* " employed in the section. In my humble opinion, I feel that it is highly desirable to provide for payment of compensation out of the fine levied to persons who have become victims of such schemes and who have invested their money in them. I also strongly urge that even the officials in charge of company law administration should be empowered to take cognizance and investigate an offence under the proposed Act since it may result in several benefits in curbing the evil sought to be remedied, as these officials possess the relevant knowledge and competency to deal adequately with such cases.

Though the Bill provides for the trial of the offence under the Act, yet it is silent on the point as to what type of procedure should be followed in the trials and whether the proceedings should be treated as a " warrant or summons case ". It is understood that the provisions of the Criminal Procedure Code will apply to the trial of such cases. There is no reason why the Bill should make such a glaring omission. It may be desirable to make a specific provision as to the procedure to be followed in the trial of the offence contemplated under the Act.

Section 4 (2) of the Bill provides that an Inspector of Police with a warrant of the Magistrate may seize and search any property used in the commission of the offence. When there is a specific enumeration of such a power, it is in the fitness of things that a provision should be made as to the production of the seized article before the Court and its disposal. It is hoped that necessary provision will be made in this regard.

It is of interest to observe that an attempt to commit an offence is not made punishable under the Act. A provision must therefore, be made to impose punishments in such cases as it is always a sound principle to follow : " *the prevention is better than cure* ". There is also another important omission in the Bill in the matter of treating the offence as to whether it is compoundable or not. In my humble opinion, considering the seriousness of the evil, it is desirable to treat the offence as non-compoundable.

It is not known as to the reasons why there is absolutely no provision in the Bill regarding the scrutiny of applications and registration of such organisations. There should be an absolute prohibition of such organisations being registered. Further any misleading statements made with intent to deceive or which indirectly attempts to establish under the guise or pretence of some business to carry on the prohibited business while getting the registration, should be made a substantive offence under the Act and must be met with a deterrent punishment.

It is hoped that the Legislature will take early steps to incorporate the above suggestions in order to fully combat successfully the eradication of the evil of money circulation as cherished in the Preamble of the Bill.

LEGAL ASPECTS OF CORRUPTION

By

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It is a matter established beyond any shadow of doubt that the scope for bribery and corruption of public servants increased enormously during the periods of War under the distressed war conditions. In spite of the fact that the War period has come to a close, yet the opportunities for corrupt practices have not exhibited any decline. This statement can be fully supported by the day-to-day occurrence of bribery cases and acts committed by public servants in the unauthorised disposal of large stock of Government Stores. The shortage of various essential goods which involves the imposition of controls and the implementation of extensive schemes of Post-war development and reconstruction have also increased the scope for corrupt practices. Thus 'corruption' has assumed the shape of a great social evil. The seriousness of the evil coupled with its probable continuance in future and its impact on the social life, necessitated the enactment of the Prevention of Corruption Act, 1947.

The object behind the Prevention of Corruption Act is to eradicate the evil practice of corruption resorted to by public servants. It is therefore, of interest to know as to the categories of persons who fall under the classification of "public servants." The Act gives no definition of a "Public servant" but simply states that he is a "public servant" as defined in section 21 of the Indian Penal Code. A careful perusal of section 21 of the Indian Penal Code, may clearly indicate that in order that a person may be called a "public servant." he must fulfil the following dual tests :—

1. He must be in the service or pay of the Government.
2. He must be entrusted with the performance of a 'public duty'.

A public servant entrusted with the performance of a public duty is permitted only to accept the legal remuneration. The term "legal remuneration" is not restricted to remuneration which a public servant can lawfully demand, but it includes all remunerations which he is permitted by the Government to accept and no public servant has a right to demand anything else to discharge such public duties. Acceptance of any thing except "legal remuneration will be "corruption" of taking "illegal gratification". The term, "gratification" is not restricted to pecuniary advantage or to gratification estimable in money. Thus 'bribery' signifies the taking or giving a reward for offices of a public nature and deals primarily with the acceptance of illegal gratification by a public servant as a motive or reward for doing or forbearing to do any official act or forbearing to show, in the exercise of his official functions, favour or disfavour to any one. There is however, no doubt at all that even a mere demand or solicitation of gratification by a public servant would fall under the concept of 'bribery'. It is interesting to know that it is not necessary that a person accepting illegal gratification should be actually in service on the date when it is accepted. It is sufficient if he expects to be a public servant, when the illegal gratification is accepted. This is clearly recognised on the principle, that a person is as much guilty and corrupt as the one who does the same thing being actually in office, who expects to be appointed to a public office, obtains money from another as the price for showing favour in the exercise of his functions in that office.

It is surprising to find that the Act has, in no way, prohibited the taking of 'presents' by public servants unless such presents operate as a motive or reward for doing an act. In the absence of such prohibition they might be induced to take bribes in the shape of presents.

Section 3 of the Prevention of Corruption Act, 1947, provides that an offence under section 165-A of the Indian Penal Code, shall be deemed to be a cognizable

offence *i.e.*, an offence for which a Police Officer may arrest without a warrant from a Magistrate. Section 165-A of the Indian Penal Code, provides for punishing the abettor of the offence of bribery *i.e.*, bribe-giver. It is interesting to note that this section provides for punishing both the bribe-giver and the bribe-taker. By enacting this provision, the law endeavours to eradicate corruption in its entirety.

It is necessary that the prosecution must prove that the public servant accepted the gratification *i.e.*, he took or received it with a consenting mind. If the acceptance of the gratification is without consideration or for a consideration which the public servant knew it to be inadequate then a presumption can be raised that he accepted it as a motive or reward for doing an act. This presumption is however, a rebuttable presumption and the public servant may exonerate himself by showing that he received the amount innocently or otherwise than as illegal gratification. However, it can be said here that if the public servant takes a multiplicity of stands it would destroy the *bona fides* of his defence.

It may be stated that the bribe-giver often does not become a willing participant in the crime but becomes rather a victim of the offence. Though section 3 of the Criminal Law (Amendment) Act, 1952, considers the bribe-giver as much a moral leper as the bribe-taker by making him liable for a substantive offence otherwise than as mere abettor, yet by section 4 a provision has been made to tender pardon to the bribe-giver so that he may be examined as a competent witness against the public servant. Further section 8 of the Prevention of Corruption Act, 1947, clearly provides that a statement made by a person in any proceeding against a public servant for an offence of bribery that he offered or agreed to offer any gratification other than legal remuneration or any valuable thing to the public servant shall not subject such person to a prosecution under section 165-A, Indian Penal Code, *i.e.*, as abettor to the offence of bribery. I feel that these provisions will definitely act as an inducement for the bribe-givers to come forward and disclose offences of bribery so that the law may reach all cases of corruption or bribery which may come to light by such disclosure.

As it would be an extremely difficult task to detect cases of bribery unless the intending offenders are given an opportunity to display their inclinations and desires, resort is usually had to laying "traps." In the case of legitimate traps, an offence comes already into existence and the trap is laid to apprehend the public servant. This arises where a person from whom the public servant demands gratification, pays the same after giving information to the Police. In consequence of such information a trap is laid to catch the public servant at the time of committing the offence. The informant in the case is not a willing party to pay the bribe but pays it, actuated by a motive of trapping the public servant. In the case of " illegitimate traps' no offence takes place but still a temptation is offered in order to see whether an offence would take place. The Courts of law always prefer to admit in evidence legitimate traps and disfavour " illegitimate traps " and the Courts insist on corroborative evidence. The practice of employing Magistrates as a ' trap witness ' has been severely condemned on the ground that if they were a party or a limb of the police during the investigation, it would seriously undermine the independence of the judiciary and also pervert the judicial outlook which every Judicial Officer is undoubtedly required to possess. There is however, no objection for employing Executive Magistrates to participate in a trap in a bribery case.

In all trap cases the Court must have a guarantee that there is no planting, as otherwise the search conducted by the investigating agency may be vitiated resulting in the unsuccessful termination of the prosecution case. In order to give such an assurance to the Court the following precautions may be taken by the investigating agency before the trap is laid and before the search of property or currency note is made :—

1. The investigating agency should see that the person who delivered the goods or tendered the money is present at the time of the search.

2. The investigating agency should see that only few persons are allowed at the time when the search is made.

3. In all cases where the investigating agency requires the presence of number of persons at the time of search, it should take special care to see that only those persons are present who are specifically authorised by it.

4. In all cases where the investigating agency has to search a large premises or anticipates during search the risk of physical danger, it may requisition the services of adequate police staff.

5. In no case the investigating agency should allow the search to be made by one who has no legitimate business in the transaction.

6. The investigating agency must invariably requisition the presence of two respectable residents of the locality, who are unconnected with the police, while making the "house-search."

Section 4 of the Prevention of Corruption Act provides for legal presumption. It states that when a person has accepted or obtained or has agreed to accept for himself or for any other person any gratification other than legal remuneration, it shall be presumed that he did so as a motive or reward for doing an act. It further provides that when a person offers gratification other than legal remuneration or has given or offered to be given it shall be presumed that he gave or offered to give or attempted to give as a motive or reward for the public servant to do an act. But the presumption are rebuttable and liable to be disproved by contrary evidence. However, if the gratification or thing offered or accepted is so trivial that no inference of corruption may fairly be drawn, no such presumption may be drawn. But it will be better that the Act should be in a position to counter-act even the slightest desire in the mind of the public servant to ask for any gratification irrespective of the magnitude or worth of the thing offered and accepted.

Section 5 of the Prevention of Corruption Act can be considered as an instance of the legislative anxiety to eliminate corruption from the public services. This section creates a new offence known as, "*Criminal misconduct in the discharge of the officials duty.*" This section deals with cases of habitual corruption with an iron-hand and also the acts of misappropriation or conversion of Government property by the public servant to whom it is entrusted or by some other person with the full aid and co-operation of such public servant. Further any acquisition of property by a public servant incompatible with his known sources of income will also make him liable for punishment unless he satisfactorily accounts of for its possession.

Section 5-A of the Prevention of Corruption Act is designed to protect the interests of public servants against any frivolous and vexatious prosecution by providing that only an officer of a designated rank, *i.e.*, of the rank of a Deputy Superintendent of Police can investigate into an offence committed under the Act. This section also provides for investigation by persons below the designated rank subject to the condition that the magisterial sanction has been obtained for such investigation. In my humble opinion, the offence of bribery does not become either grave merely because the investigation is conducted by the officer of a designated rank or less if done by the official below the designated rank. The restriction imposed in the matter of investigation may impede the apprehension of corruption cases. I therefore, feel that this section should be abrogated so as to make it permissible for any Police Officer to investigate the offence. It is not understandable at all as to how the interests of justice can be said to suffer, when there is a Court of law to decide ultimately about the guilt or innocence of the accused.

Section 6 of the Prevention of Corruption Act provides that no Court shall take cognizance of an offence committed under the Act unless the sanction from the appropriate authority is obtained before the prosecution is launched. The intention of the Legislature appears to be to give reasonable protection to the public servants in the discharge of their official duties. Non-compliance with the requirements of sanction contemplated by this section is fatal to the prosecution case. The satis-

faction of the sanctioning authority is subjective and not liable to be challenged, provided it was given by the proper authority and it relates to the same matter which is the subject-matter of the charge levelled against the public servant. There is no denying the argument that by virtue of this provision the sanctioning authority is placed in the position of " a sentinel at the doors of criminal Courts so that no irresponsible or malicious prosecution can pass the portals of the Courts of Justice." However, in my humble opinion this rule causes a serious impediment in the active prosecution for violations of corruption law. I strongly feel that the requirement of sanction should be discarded. The public servant must be required to get an open judicial declaration of his innocence. There is no objection for the State to sanction the defence of the public servants to enable them to fight out honourably the charges levelled against them. It may be quite true that the impartial discharge of duties by the public servant may result in displeasure to some members of public, who may become his enemies. However, there is nothing in law which prevents the public servants from establishing this aspect of the case in the Court. In fact under section 7 of the Prevention of Corruption Act the accused is placed in a most favourable situation to defend himself. By virtue of this provision an accused can be a competent witness in his own case, though the prosecution should not draw any adverse inference if he does not so choose to become a witness. In the presence of several salutory safeguards provided by the Act the requirement of sanction as a pre-requisite for launching a prosecution becomes meaningless and requires immediate abrogation.

A clear study of the corruption law would reveal that it made no provision for the periodical scrutiny of the statements of public servants relating to their property and for penalties thereof, in case of false returns. The Act should also provide that the public servant should have no private contacts with persons with whom they have or likely to have official dealings a violation of which should be met by a deterrent punishment. Further public servants should be required to make a declaration on his first entry into the office relating to the property held and possessed by him. A verification must be made periodically with the subsequent statements filed by the public servant so that any illegal acquisition made by him may be detected easily. There is nothing in law which can prevent a public servant from acquiring property with the money he earns by the " sweat of his brow." The punishment for bribe-givers should be enhanced in all cases where the bribe offered is not accepted by the public servant in order to deal adequately with those persons who attempt to destroy the honesty and reputation of persons occupying public offices. The State should make provision for the award of prizes and medals to honest public servants. The powers of public servants in the discharge of their duties should be regulated by procedure and in no case be left to their ' pure discretion ' as otherwise the vesting of large discretionary powers in public servants may induce them to directly or indirectly make a demand for a 'bribe.' Standing Orders should be passed in respect of the period within which a particular matter before the public servant should be disposed of. In other words, delay in the discharge of public duties may create opportunities for the public servant to expect something from the parties, the receipt of which may induce him to take up the matter for disposal. It can clearly be said without any controversy that delay germinates the seeds of corruption. It is hoped that the Legislature will take early steps to introduce adequate provisions which may effectively help the executive agency to eradicate the social evil of bribery and corruption.

A NEED TO AMEND SECTION 247 OF THE CRIMINAL PROCEDURE CODE.

By

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Section 247 of the Criminal Procedure Code deals with the dismissal of the complaint and the acquittal of the accused in the event of non-appearance of the complainant on the day fixed for the appearance of the accused or any day subsequent thereto to which the hearing may be adjourned. Section 247 states thus :—

"If the summons has been issued on complaint, and upon the day appointed for the appearance of the accused, or any day subsequent thereto to which the hearing may be adjourned, *the complainant does not appear*, the Magistrate shall notwithstanding anything hereinbefore contained, acquit the accused, unless for some reason he thinks proper to adjourn the hearing of the case to some other day :

"[Provided that where the Magistrate is of opinion that the personal attendance of the complainant is not necessary, the Magistrate may dispense with his attendance and proceed with the case.]"[1]

A careful perusal of the above section will clearly indicate that the complainant, "must appear" on the day fixed for the appearance of the accused or any day subsequent thereto to which the hearing may be adjourned except in such cases where the Court dispenses with the personal attendance of the complainant or adjourns the hearing of the case to some other day for some reason which it thinks proper. It can easily be postulated that the non-appearance of the complainant on the day fixed will result in the acquittal of the accused.

It can be firmly stated without any controversy that section 247, Criminal Procedure Code, makes no mention as to the presence of the complainant at a particular time or that he should be present when being called out by the Court. However, if a wide interpretation is given to the word, "appear" it follows by necessary reasonable, logical and natural inference that the law expects the complainant to be present on the day fixed for hearing and that he must satisfy the Court of such appearance by publicly notifying his presence when his name is called out by the Court. This imposes a duty on the complainant to be present in the Court throughout the day fixed for the hearing and not to leave the Court save with the permission of the Court. This statement, to a certain extent, can be supported by the ruling given by the Madras High Court in the case of *N. Tonkya* v. *Jagannatha*[2]. In this case reliance was placed on Order 9, rule 8, Civil Procedure Code which provides for the appearance of the plaintiff when the "suit is called on for hearing" and also states that if the plaintiff does not appear, "when called on for hearing" the suit be dismissed.

In a very recent case, *Mofatlal Manilal Shah* v. *C. C. Shah and State of Gujarat*[3] Mr. Justice V. B. Raju of the Gujarat High Court in a notable passage in the judgment lucidly observes thus :—

"The words, 'when called on for hearing' cannot be imported in section 247, Criminal Procedure Code............."

1. Substituted by Code of Criminal Procedure (Amendment) Act XXVI of 1955.
2. 51 M.L.J. 730 : A.I.R. 1926 Mad. 1009.
3. A.I.R. 1965 Guj. 180 at 181.

It is a naked truth to state that in section 247, Criminal Procedure Code, the words, " when called on for hearing " are not found. However, the earlier precedent established in the Madras decision in the case of *N. Tonkya* v. *Jagannatha*[1] would have clearly justified the liberal interpretation of the word, " appear " used in section 247, Criminal Procedure Code, so as to mean, " to appear when called on for hearing". Mr. Justice V. B. Raju gave no reason to disagree with the views of the Madras decision[1] except stating that section 247, Criminal Procedure Code, does not make specific use of the words " to appear when called on for hearing". In my humble opinion the views of Mr. Justice V. B. Raju require reconsideration.

At any rate, it may be highly desirable to amend section 247, Criminal Procedure Code, so as to add the words, " when called on for hearing " after the words, " does not appear". This amendment will definitely put an end to all further judicial controversies and will make section 247, Criminal Procedure Code, to indicate the real legal effect in the event of the non-appearance of the complainant on the day fixed for the hearing.

LAW'S ANOMALY

By

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The denial of the right of appeal in a suit of a Small Cause nature from the Original Court of trial under the Provincial Small Causes Court Act works a great hardship and is a discrimination against litigants governed by the said Act, as against those that are parties in Original Suits. The jurisdiction of Small Cause Courts extends up to Rs. 2,000. And we can well conceive of a case of Rs. 2,000 value, in a Small Cause suit not being properly tried and injustice done to a party. He cannot appeal, because there is no appeal provided, but he can only prefer a revision to the High Court which Court again will admit a case on a point of law only and not on facts. Hence a litigant with a right cause with him runs the risk of being doomed in a few cases at least. On the contrary a party to a case of an Original Suit be its value even so low as Rs. 100 can prefer an appeal to the appellate Court and press his points on facts as well as on law. Is not this an anomaly? And cannot this defect be rectified?

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1. 51 M.L.J. 730: A.I.R. 1926 Mad. 1009.

BOOK REVIEWS.

The Law of Hire Purchase in India and England *by* Bhawani Sankar Chowdhury, 1965; Published by Eastern Law House Private, Ltd., Calcutta; 332 pages; Price Rs. 15. Foreword by Mr. H. K. Bose, *Chief Justice* of West Bengal.

The contract of hire-purchase is a modern development of commercial life which has in it not only the element of bailment but also the element of sale. In England protection against exploitation has been afforded in many respects to the hire-purchaser by the Hire Purchase Act, 1938 and the Hire Purchase Act, 1954. These Acts have secured for him a measure of 'fair deal'. In India there is no legislation covering the subject and the law applicable has to be gathered from the provisions of the Contract Act, and the Sale of Goods Act. Since the concept of hire-purchase has come down to us from England the decisions of the English Courts can also be useful guides in the understanding of the law so far as such decisions are suitable to the facts of life in this country. The Author has rendered a real service in writing this book on this branch of the law.

The Author's outlook and approach are not conventional but carry a flavour of original thinking. The presentation of the hire-purchase agreement as a fictitious contract based on a trinity of fictions—the hiring, the option of purchase and the option to return—is really interesting. The Author has stated frankly that he started with the idea that an Indian Hire Purchase Act was overdue, but when he finished the work he found there was no necessity for any legislation on the subject itself provided amendments he has suggested to section 19 (3) of the Contract Act and section 46 of the Sale of Goods Act could be adopted (see pages 142 and 145) and the Courts exercise an independent jurisdiction in the field of equity and good conscience without being tied to that of the Court of Chancery in England (see page 155).

Some of the Author's 'asides' are noteworthy. Thus, for instance he writes: "England is the home of cricket and cricket gave England a phrase for the guidance of social relations, 'fair play'........ If we can take anything from England even to-day it is this ideal of 'fair play' for everything. Let that be our motto, too. Let our legislators forget the 'isms' and ideals at the altar of which they burn their incense, with so little benefit. Let them secure for all a fair deal in everything. They need not talk of Socialism or even of any Socialistic Pattern." (pages 138-139).

The Author is sometimes unnecessarily forthright in his remarks. Criticism may be outspoken but does not require either pungency or hard language. His statement at pages 163-164 *a propos* of the decision in *Subbarayulu* v. *Annamalaik*[1]— "But this Single Judge decision of the Madras High Court is full of blunders and illegalities. It does no credit to Mullah's book to be supported by such a decision. Ordinarily it would be decorous for the legal profession to neglect it into oblivion, but as it stands unreversed by any bigger Bench or higher judicial body I cannot afford to leave it standing undisturbed in a work like this, especially as it goes against my thesis"—might have been expressed equally effectively in more sober language.

The Author's claim in the Preface "whenever I take up a subject I have always something new to say" reminds one of what was recounted about Lord Curzon at Oxford that on his desk were inscribed the words "George Nathaniel Curzon is a superior person".

The Author's reference in the Preface to the "ruling caucus" in the Calcutta University foiling the attempts of his friends to secure an invitation for him to deliver a year's Tagore Law Lectures notwithstanding great encouragement and apprecia-

1. (1945) 1 M.L.J. 460: I.L.R. (1946) Mad. 174.

tion of his work by Dr. Radha Binod Pal, and his call to Government to launch an inquiry into the working of the Tagore Foundation to save it from the ignominious death staring it in the face to-day cannot be treated casually but should be looked into to ensure 'fair play' and the achievement of the objects of the Foundation.

Verily an interesting book written with verve and originality.

INTERPRETATION OF STATUTES AND GENERAL CLAUSES ACTS (CENTRAL AND STATES) with Words and Phrases *by* N. S. Bindra; Published by the Law Book Company, Allahabad; IV Edition, 1965; 1,175 pages; Price Rs. 35.

While it is true that it is not allowable to interpret what has no need of interpretation—*absoluta sententia expositore non indiget*—Alexander Hamilton's remark that "when the Almighty himself condescends to address mankind in their own language, His meaning luminous as it must be is rendered dim by the cloudy medium through which it is communicated" draws pointed attention to the innate intricacies of language and the exasperating character of interpretation. Dean Swift could visualise a State where no law can have more words in all than the number of letters in its alphabet which were but two and twenty and to write a commentary on any law amounted to a capital crime. Realities are however different and in our country since independence the minting of laws has been fast and furious, and it was only recently that the learned Attorney-General referred to the spate of ill-considered legislation in the country. No wonder that interpretation of statutes is throwing up problems ever and an on and interpretation has become a science in itself.

It is the duty of the Judges to interpret the law and to apply it. Since Parliamentary draftsmen are not infallible and the infirmities of language are many the play of judicial judgment in the construction of statutes inevitably assumes great importance. In the task of interpretation the Courts constantly bear in mind the principle that "a statute is designed to be workable and the interpretation thereof by a Court should secure that object, unless crucial omission or clear direction makes that end unattainable" (per Lord Dunedin in *Whitney* v. *Commissioners of Inland Revenue*[1]). The principles guiding the Judges in the task of interpretation have become crystallised through the decisions of the highest Courts in England and the United States over the years and afford valuable assistance to our Judges, though after the advent of the Supreme Court a pragmatic as distinguished from the conventional approach is being preferred and greater importance is attached to the intention of the framers in interpreting the law, particularly the Constitution (see *Sajjan Singh* v. *State of Rajasthan*[2]). Likewise in interpreting enactments of the Legislatures Courts are guided by the Directive Principles of State Policy and the declared objective of making the country a Welfare State (see *Bihar Zemindari case*[3]; *Subodh Gopal's case*)[4].

The book under review is laid in 4 parts. Part I deals with the interpretation of statutes and runs to 33 chapters. Part II contains the text of the Central General Clauses Act of 1897 with running comments on the sections. Part III gives the texts of the States General Clauses Acts. Part IV contains Appendices setting out the Report of the Select Committee, Statement of Objects and Reasons, and Notes on Clauses relating to the Central General Clauses Act. It also gives the Pakistan (Adaptation of Existing Pakistan Laws) Order. The case-law has been brought almost up to date, though in the endeavour a long addendum has become necessary mentioning decisions even of 1954 which seem to have been missed earlier.

That within a decade of its publication four editions of the work have been called for testifies to its popularity. The Author has collected considerable material and his presentation is lucid and learned. The book is bound to prove highly useful to the members of the Bar as well as to Judicial Officers.

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1. L.R. (1926) A.C. 37.
2. (1965) 1 S.C.J. 377, 385, 389.
3. (1952) S.C.J. 354.
4. (1954) S.C.J. 127 ; (1954) S.C.R. 670.

THE DEFENCE OF INDIA ACT, 1962 AND RULES *by* B. N. Dutt and B. R. Beotra; IInd Edition; Revised by E. S. Subrahmaniam; Published by the Law Book Company, Allahabad, 1965; 568 pages; Price Rs. 17-50.

The issue of the Proclamation of Emergency on 26th October, 1962 under Article 352 of the Constitution consequent on the Chinese aggression provided the occasion for the Author to write this book. Security of the country and control of subversive activities call for special powers and special measures. The Defence of India Act, 1962, and Rules issued thereunder were designed for that purpose. The provisions of the Act and the Rules were modelled on those of the Act of 1939 and Rules. Their drastic character are naturally irksome but they have become more irritating by the manner of their application in practice. Politicians, editors and even students have got into their orbit. If in England, so eminent a Law Lord like Lord Atkin could say in the *Liversidge case*[1] that arguments in support of executive action under the D.O.R.A. reminded one of the days of the Star Chamber it is no wonder that a large class of persons in this country find the Defence of India Act and the Rules highly obnoxious. This is all the more a reason why the scope of the Act and the Rules should be clearly understood by the general public as well as by those who have to operate them, for as Vivian Bose, J., remarked in *P. K. Tare's case*[2] "not even in war time can the Executive suddenly step in and claim the right to wield arbitrary power". Verily eternal vigilance is the price of liberty. The Author has therefore done well in presenting the Act and the Rules with lucid comments supported by relevant decisions rendered under the earlier Act of 1939 and Rules. Six important Amendments made to the Rules have also been incorporated. The book is bound to be helpful to lawyers, Judges, and also to the Executive Officers.

LAW OF SPECIFIC RELIEF *by* Dr. S. C. Banerji; IIIrd Edition; Revised by J. P. Singhal; Published by the Law Book Company, Allahabad, 1965; 824 pages; Price Rs. 30.

The book is based on the Tagore Law Lectures delivered by the Author on the subject in 1906. Sir Asutosh Mukherjee observed in his Foreword to the second edition that the Author's academic achievements were of the highest order and that he had no peer among his contemporaries in the Universities of Calcutta and Allahabad. The book was hailed as a contribution of enduring value on the subject. Since the appearance of the first edition, however, the Author passed away and the task of revision has fallen on others. Secondly the Specific Relief Act of 1877 has been replaced by the Specific Relief Act of 1963 (XLVII of 1963). The Revising Author has taken note of these facts. The frame of the work has been changed to that of a running commentary on the Specific Relief Act of 1963 without sacrificing in any way the good features of the original work. That the work has not suffered by the transformation is to the credit of the Revising Author. Lucidity of presentation, a feature of the original work, is fully maintained. Case-law has been brought up to date. Decisions like *Maganlal* v. *Ambica Mills, Ltd.*[3] and *Sunilchand* v. *Aryodaya Spinning and Weaving Mills*[4], find mention. It is however a pity that the question of the constitutional validity of section 57 of the Specific Relief Act, 1877 (now section 42) regarding which doubts have been planted by the former decision and touched, without being called upon to decide, in the latter decision has not been discussed and the benefit of the Revising Author's view is not available.

On the whole the present edition maintains the level of the previous editions and will afford valuable guidance to the members of the Bar and to Judges in matters relating to specific relief. The book is a welcome publication.

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1. I.R. (1942) A.C. 206.
2. (1943) 2 M.L.J. 90; A.I.R. 1943 F.C. 1.
3. A.I.R. 1964 Guj. 215.
4. A.I.R. 1964 Guj. 115.

THE NEGOTIABLE INSTRUMENTS ACT *by* Sanjiva Row; Revised by E. S. Subrahmanyan, 5th Edition, 1965; Published by the Law Book Company, Allahabad; 972 pages; Price Rs. 30.

Sanjiva Row was in his days a prolific writer in the field of law. Not the least important among his works is his book on the Negotiable Instruments Act. From the days of Lord Holt down to the present time negotiable instruments have been a subject of rapid and continuous growth. The whirligig of time has brought in its revenges and "the obstinacy and opinion ativeness of the merchants who were endeavouring to set the law of Lombard Street above the law of Westminster Hall" so much deplored by Lord Holt has been responsible for the great part which negotiable instruments have come to play in the world of commerce. The Indian Negotiable Instruments Act of 1881 though enacted a year earlier than the English Bills of Exchange Act, 1882 is based essentially on the principles of English law, so much so the decisions rendered by the English Courts under the various provisions of the latter Act continue to illumine many a dark corner in the analogous provisions of the Indian Act. The Law Commission of India in its Eleventh Report has not suggested any drastic changes in the Act but has only indicated the desirability of regrouping of the sections to make the scheme similar to that of the English Act.

The Revising Editor has taken note of all relevant English and Indian decisions facilitating the understanding of the provisions of the Act. He has endeavoured to keep the comments lucid, helpful and up to date. The Appendices A to G furnish the texts of the English Bills of Exchange Act, 1882, of the relevant provisions of the Civil Procedure Code, Limitation Act of 1963, the Indian Stamp Act, the Indian Evidence Act and the Notaries Act, 1952. It is somewhat curious that in the comments on page 16 India is described as consisting of the States and the territories specified in Parts A, B and C of the First Schedule. The modifications made subsequent to the date of the Constitution seem to have been missed. The book is, on the whole, a welcome publication.

THE INDIAN RAILWAYS ACT *by* Sanjiva Row; IVth Edition, 1965; Revised by K. T. Narasimhachar; Published by the Law Book Company, Allahabad; 1,045 pages; Price Rs. 35.

There are not many books on the Indian Railways Act. Sanjiva Row's Commentary published in 1917 had won a name for brilliant analysis and luminous exposition. Since the publication of the first edition Indian Railways have passed through a number of vicissitudes. First there was the nationalistion of Railways making the entire railway system State-owned. Secondly consequent on the carving out of Pakistan the previous railway systems fell to be divided. The Railway Freight Structure Enquiry Committee (1956-57) had made a number of important recommendations leading to the Indian Railways (Amendment) Act, XXXIX of 1961. A noteworthy change effected in the earlier law as a result of the Amending Act was the transformation of the liability of railways in regard to animals and goods from that of bailees into that of common carriers. Accordingly the old section 72 has been scrapped and a new section 72 has been substituted among other things. Apart from the text of the Indian Railways Act and the comments on the sections, there is a wealth of Appendices attached containing as many as forty items of very useful information not always easily available to the reader. Part A of the Appendices contains the text of Referential Legislation so far as may be pertinent to the subject. Part B sets out the statutory rules and Part C the Departmental rules. On page 467 it is stated that the Supreme Court decision in *Jetmull Bhojraj* v. *The Darjeeling Himalayan Railway Co., Ltd.*[1] has not been reported in the Law Journals *in extenso* though in the Addendum on page lxxvii f.n. 3 the reports of the decision *in extenso* have been noticed. A reference to the statement on page 467 might also have been made at the appropriate place as needing modification.

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1. (1963) 1 S.C.J. 505: (1963) 1 M.L.J. (S.C.) 89: (1963) 1 An.W.R. (S.C.) 89.

Case-law up to October, 1964 has been noticed. Every effort has been made to maximise the utility and self-sufficiency of the work. The book will be a valuable addition to the library of every lawyer, Judge and Railway Departmental Officer. The Revising Editor deserves congratulations for the thoroughness and ability with which he has executed his task.

The Trade and Merchandise Marks Act *by* T. R. Srinivasa Iyengar, 1965; Published by the Law Book Company, Allahabad; 663 pages; Price Rs. 22-50.

It is well recognised that like copyrights and patents trade and merchandise marks form a real right of property, vide *London Rubber Co.* v. *Durex Products*,[1] and require protection. In England the Trade Marks Act of 1875 conferred a right of property on the owner of a registered trade mark. With the progressive increase of trade and commerce changes were called for from time to time and the latest Consolidating Act in that country is the Act of 1938. In India the Merchandise Marks Act, 1889 and the Trade Marks Act, 1940 dealt with the subject. They have been replaced now by the Trade and Merchandise Marks Act, 1958 (XLIII of 1958), which, with minor differences is based on the English Consolidated Trade Marks Act, 1938. The book under review is a commentary on the Act of 1958 containing an exposition of the law in the light of the English and Indian decisions. The Rules framed under the Act are also given making the book self-contained. The text of the English Act and other connected matters are found in the Appendices.

On page 84 in f.n. 47 referring to the decision of the Allahabad High Court in the *Amrit Dhara case*,[2] it is stated: "This case seems to have been reversed by the Supreme Court on the point". (*See* also page 166 f.n. 50). The Supreme Court judgment is actually reported in journals like I.L.R. (1963) 1 All. 38, (1963) 2 S.C.R. 484, A.I.R. 1963 S.C. 449. It is not clear why there is no citation of these reports. Again the judgment in *Parry & Co.* v. *Perry & Co.* is cited on page 339 f.n. 28 merely as A.S.No. 291/59 while actually the full report of the decision was available in (1963) 2 M.L.J. 311 and A.I.R. 1963 Mad. 460, more than a year before the date of the publication of the book.

It is also somewhat curious that out of the 663 pages comprising the entire book as many as 119 pages are taken up by the Index.

The Act is a complicated piece of legislation requiring lucid and analytical exposition. The present work endeavours to meet that need and is bound to be helpful in understanding the provisions of the Act to traders and merchants as well as to lawyers and judicial officers.

The Indian Trusts Act *by* N. Suryanarayana Iyer, 1965; Published by the Law Book Company, Allahabad; 587 pages; Price Rs. 22-50.

It is a remarkable feature that over a fairly long period of more than eighty years the Indian Trusts Act has not been subjected to any amendment. It is also noteworthy that though the concept of trusts has been familiar in India from very early times it was at no point of time regarded as giving rise to duplicate ownership. The Author's claim that in his exposition of the subject he has set his face against prolixity is fully borne out. It is also interesting to note that his comments on the provisions of the Trusts Act are not as is often the case with some commentaries, "like Hamlet all quotations". These are commendable features. The comments are adequate not jejune, analytical not diffuse. It is not clear why decisions of the Supreme Court like *Sheikh Abdul Kayum* v. *Mulla Alibhai*,[3] on the question of renouncing by trustees or delegation by them of their powers, and *Appa Rao* v. *Ramalingamurthi*,[4] holding that section 84 is not

1. A.I.R. 1959 Cal. 59.
2. A.I.R. 1957 All. 683.
3. A.I.R. 1963 S.C. 309.
4. (1962) 2 S.C.J. 437: A.I.R. 1962 S.C. 370.

exhaustive in the sense that the only cases where equitable principles can be invoked are cases falling under the section are not referred to, particularly as the book is of the year 1965, and the decisions of the Supreme Court declare the law binding on all the Courts in India. *Janakirama Iyer* v. *Nilkantha Iyer* mentioned on p. xxxii, line 32 is not to be found on page 25 as stated, nor is it clear whether it is a citation distinct from the case of *Janakirama Iyer* v. *Nilakantha Iyer* mentioned on the same page in line 38. The book under review is on the whole an attractive presentation of the subject and will be a useful addition to the literature on the law of trusts.

LAW OF ABETMENT, CRIMINAL CONSPIRACY AND CONSTRUCTIVE LIABILITY *by* R. L. Gupta, 1965 ; Published by the Law Book Company, Allahabad ; 476 pages ; Price Rs. 15.

Abetment, conspiracy and constructive liability are related topics. The relevant principles concerning these topics have to be culled out from different statutes and from leading judicial expositions. This book aims at bringing together at one place all such information in an orderly and systematic manner and the Author has taken great pains over it. But curiosities in expression at many places mar the value of the effort. On page 2, para. 2 it is stated "The law provides that only he is not to be punished who does the act but, etc.". Presumably it is meant that "the law provides that not only he is to be punished who does the act, etc.". On the same page in para. 3 it is stated that "nothing is an offence which is done by a person who in good faith believes himself to be looked by law to do it". Possibly the word "looked" stands for "expected" or "justified". On page 6 the maxim is cited as *actes non-facit reum insimens sit rea.* This is really a mangling of the maxim *actus non facit reum nisi mens sit rea.* Typographic errors also are often found . If these shortcomings had been avoided the utility of the work would have been enhanced.

THE POLICE INVESTIGATION AND THE COURTS *by* V. Mitter, 1965; Published by the Law Book Company, Allahabad ; 325 pages ; Price Rs. 12-50.

Without obedience to law civilised life will be impossible. The two limbs of law are the Police and the Courts. The Police provide the raw materials as it were and the Courts administer justice. The Author has endeavoured to expound the duties of the Police and the Courts in the administration of justice. His mode of exposition is often stimulating. Some of his statements are controversial or debatable. One is not sure whether his statement on page 78—"We have only to look at our police force and that would adequately reveal to us why our investigation is often faulty if not a make-up affair and why cases so often fail in a Court of law"—will find acceptance. The Author's remark about Law Colleges, whether they teach law at all (page 250) and his opinion about the evils of appointing junior and inexperienced lawyers as Magistrates and of the desirability of appointing from among "seasoned lawyers" may not be altogether relished. The book holds one's interest through out and stimulates thought.

THE COURT AND THE OFFICERS OF THE LEGISLATURE OF A STATE UNDER ARTICLES 212 (2) AND 190 (3) (*b*) OF THE CONSTITUTION OF INDIA.

By

V. MAYA KRISHNAN, B.A., M.L., *Advocate, Madras.*

This article is an appraisal of the nature of the jurisdiction of the Court over the officers of either House of the Legislature of a State regarding the resignation of members of either House of the Legislature. Article 190 (3) of the Constitution of India reads :—

" (3) If a member of a House of the Legislature of a State—

(*a*) becomes subject to any of the disqualifications mentioned in clause (1) of Article 191 ; or

(*b*) resigns his seat by writing under his hand addressed to the Speaker or the Chairman as the case may be.

his seat shall thereupon become vacant."

What does sub-clause (*b*) of clause (3) of Article 190 connote? Does it contemplate an acceptance of the letter of resignation from a member by the Speaker or by the Chairman? What is the import of the expression " addressed to the Speaker " ? Will it suffice, if the contents of the letter show that the letter is to the Speaker? Is actual receipt of the letter by the Speaker necessary? Does the word " thereupon " mean " immediately " ?. Does this Article contemplate prospective resignation? Should the resignation be with the full consent of the writer of his own volition and not any letter of resignation? Legislature being the most sensitive organ of the Government, it is necessary that the full import of this clause of Article 190 of the Constitution of India be made clear to the members of the Legislature and to the public at large. In this connection, the three cases decided on the subject of resignation of members of a House of the Legislature of a State will be examined here. They are: *Thankamma* v. *The Hon'ble Speaker, Legislative Assembly*[1], *M. Kunjukrishnan Nadar* v. *Hon'ble Speaker, Kerala Legislative Assembly*[2] and *Surat Singh Yadav* v. *Sudama Prasad Goswami*[3].

In all these cases, the question that arose for decision was whether the civil Courts have jurisdiction to go into the question of resignation of the member of the House of the Legislature of a State. The relevant provision invoked against the jurisdiction of the Court was clause (2) of Article 212 of the Constitution. Article 212, clause (2), reads as follows :—

" No officer or member of the Legislature of a State in whom powers are vested by or under this Constitution for regulating procedure or the conduct of business, or for maintaining order, in the Legislature shall be subject to the jurisdiction of any Court in respect of the exercise by him of those powers. "

1. A.I.R. 1952 Trav. Co. 166.
2. A.I.R. 1964 Ker. 194.
3. A.I.R. 1965 All. 536.

It should be noted here that the bar against interference in the exercise of powers of the officer of the Legislature operates not only regarding the powers vested in him by the Constitution directly but also regarding the powers vested in him indirectly under the Constitution in the form of Rules of the Legislature framed by it.

Admittedly, the Speaker is an officer of the Legislature of a State as contemplated in the provisions of the Constitution. To what extent does Article 212 (2) operate as a bar to the jurisdiction of the Courts regarding the transaction of resignation of the member of a House of the Legislature with the Speaker ? In *Thankamma's case*[1], the question arose in this way. During the year 1951, there prevailed unrest among the members of the Travancore-Cochin Legislative Assembly due to the non-exclusion of the Cochin members from the Cabinet. Some of the members from Cochin group even offered to tender resignation. About this time, a by-election for the Legislative Assembly, Travancore-Cochin State was to take place in 43, Ernakulam Women Constituency which fell vacant. The only two candidates who filed the nomination papers, were the petitioner and one Dr. Madhavi Amma. Some prominent persons including some leaders of the seceding party approached the petitioner with a proposal that they would persuade the rival candidate to withdraw her candidature so as to enable the petitioner to be returned unopposed and induced her to sign a paper to the effect that she resigned her membership, though on that day she was not even a member. They expressly gave assurance to the petitioner that the paper would not be used by them against her wishes. Responding to their inducement, she gave the letter to the abovesaid effect which was purported to be addressed to the Speaker, Legislative Assembly, Trivandrum. There was no date put on it, as it was not intended to be used. On the withdrawal of the rival candidate from her candidature, the petitioner was declared to have been returned unopposed. As the political situation eased, the petitioner sensed some foulplay, because the paper she had given was not returned. In order to prevent foulplay and mischief, the petitioner sent a telegram and a letter confirming the telegram to the Speaker, intimating him that an undated letter purporting to be her resignation of assembly membership was understood as being despatched, that she did not confirm the same, that if any such letter should happen to reach him, her present letter might be considered as a withdrawal of the contents therein, and that no action was to be taken on such letter. Later, when she attended the session on requisition from the Speaker, in order to take the oath of office, the oath was not administered to her by the Speaker, though the Speaker declared in the Assembly that she was entitled to take her seat. The next day, an official communication was handed over to her by the Secretary, Legislative Assembly, stating that a letter dated 13th September, 1951, purporting to be the petitioner's resignation of her membership was received by the Hon'ble Speaker on 17th September, 1951 and that she might confirm or repudiate the authorship of the same. The petitioner made a personal representation to the Secretary and the Speaker, Legislative Assembly and explained everything, including the fact that the letter itself was despatched by registered post at Ernakulam on 14th September, 1951 when she was in Rameswaram. She was however, surprised to receive a copy of the notification, dated 15th October, 1951, from the Secretary, Legislative Assembly, that the petitioner had resigned her seat in Travancore-Cochin Legislative Assembly with effect from 13th September, 1951. Thereupon, the petitioner preferred a petition under Article 226 of the Constitution of India praying the Court to issue directions or writ to the Speaker and the State to abrogate the said notification and allow the petitioner to continue her membership and retain her seat in the Assembly, and also to direct the Speaker to administer oath to her and to allow her to take her seat in the Assembly.

It is pertinent to note that the petitioner had in the first place prayed for the abrogation of the notification from the Secretary, Legislative Assembly and then only for a direction to the Speaker to administer her oath of office. In substance, the

1. A.I.R. 1952 Trav. Co. 166.

question that arose for determination was whether the transaction of resignation of a member formed part of the conduct of business of the Legislature so as to operate as a bar against the interference by the Court under clause (2) of Article 226 of the Constitution of India and not the question of administration of oath of office under Article 188 of the Constitution of India. Therefore, it is logical that the determination of the question of abrogation of notification should precede the entertainment of the question regarding the administration of oath of office and not *vice versa*. It is curious to note that the learned Judge wo gave his judgment in *Thankamma's case*,[1] has reversed the order and started from the other end. The learned Justice Govinda Pillai, *prima facie*, began to consider the question of taking of oath by a member. He said that since Article 188 of the Constitution provided that the members before taking their seat should make or subscribe an oath or affirmation before the His Highness Rajpramukh or some person appointed by him in that behalf, it is only a condition precedent to entitle members to sit in the Assembly and conduct business. The taking of oath, is therefore, not an item in the conduct of business mentioned in Article 212. The Hon'ble Speaker is by virtue of Article 178, an officer of the Assembly and the ruling that he gives in the conduct of business may not be subject to the control of civil Courts. " But it can easily be seen from Article 188 of the Constitution that the oath to the member is to be administered by His Highness the Rajpramukh or by some one appointed by him in that behalf. So the administration of the oath is a function exercised by the Honourable Speaker in his official capacity ....But that will not give him any special prerogative to seek shelter under Article 212."[1] It is submitted that the approach of the learned Judge is begging the question, for, instead of deciding the question whether the petitioner was a member or not in the first instance, he assumed that the petitioner was a member while considering the question of taking of oath.

Rejecting the arguments of the learned Advocate-General that the ruling in *Bradlaugh* v. *Gosset*[2] would bar civil Courts from entertaining the question before the Court, the learned Judge observed that there was no provision in the Constitution (probably including the operation of the already rejected Article 212 (2)) disentitling the civil Courts from going into the questions of the nature presented by the petitioner before the Court. In fact, he says, that Article 226 gives wider powers. From the observations of the learned Judge it is clear that he has not at all (stated with all humbleness) indicated the basis by which he assumed jurisdiction, while there exists a clear bar to that effect under Article 212 (2).

The learned Judge next proceeds to construe Article 190 (3). He says, " This provision necessarily indicates that the letter of resignation must necessarily proceed from the member and that the resignation must relate to a membership held by the person who sends the same. The mere receipt by the Speaker of a letter of resignation purporting to be from a member will not cause that member's seat to become vacant. It is open to the Honourable Speaker to enquire whether that is a genuine letter or a forged letter, or one obtained by fraud, or force or is only a void document. The position taken, that the Honourable Speaker has no right to enquire any matter relating to resignation cannot therefore be sustained".[1] In the absence of any Rules framed under the Article 208 of the Constitution regarding the resignation of the members of the Travancore-Cochin Legislative Assembly imposing a duty on the Speaker to ascertain the genuineness of the letters of resignation and to act upon such enquiry, the learned Judge is correct in indicating that such a duty is imposed on the Speaker by Article 190 (3) of the Constitution. The learned Judge was not satisfied with that. Instead of directing the Honourable Speaker to exercise the duty imposed on him as to the enquiry of genuineness of the letter of resignation, the learned Judge himself proceeds to consider the question of genuineness of the letter of resignation which is not warranted by the provisions of the Constitution.

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1 A.I.R. 1952 Trav.-Co. 166 (169).

2 (1884) L.R. 12 Q.B.D. 271.

He says "These facts would show that the letter of resignation was not intended to be one resigning her seat for at that time she was not even an elected member of the Legislative Assembly..........................She cannot resign prospective status which she may or may not get in the ordinary course of events. I would therefore hold that the letter is a void document and by virtue of that the petitioner has not lost her seat in the Assembly."[1] In the final analysis it may be submitted that while the learned Judge in *Thankamma's case*[1] has clarified the import of Article 190, clause (3) of the Constitution, he has failed to state why he assumed the function of the Speaker of the Legislature regarding the determination of the genuineness of the letter, particularly when the Constitution is specific and emphatic against the assumption of such jurisdiction by the Court. Commenting on the decision of this case, the learned Constitutional Expert, Basu says "............that the decision is not free from doubt, for, the Court would be *prima facie* barred by Article 122 (2) to entertain the case since the resignation of a sitting Member may be said to be a part of the "business" of the House and since the Constitution provides that the resignation is to be addressed to the Speaker, the Speaker is an officer empowered within the meaning of Article 122 (2). Whether a member is entitled to relief from the House itself is a different question, but it is seriously debatable whether the Court has the jurisdiction to interfere in such circumstances"[2]. It is obvious that no rules of procedure existed under the Rules framed by the Legislative Assembly, Travancore-Cochin, with respect to the resignation of a member, when present case came up before the Court. Under Article 194, clause (3), "the powers, privileges and immunities of a House of the Legislature of a State, and of the members and the Committees of a House of such Legislature, shall be such as may from time to time be defined by the Legislature by law, and, until so defined, shall be those of the House of Commons of the Parliament of the United Kingdom, and of its members and Committees, at the commencement of the Constitution." Therefore, the practice of the House of Commons of the Parliament of the United Kingdom that existed at the commencement of our Constitution, should govern the matters relating to the resignation of a member of the Travancore-Cochin Legislative Assembly. In the English Parliament, "a member of the House of Commons cannot unilaterally resign his membership[3] without the approval of the House. Therefore, it is submitted that the Court in directing the Speaker to administer oath of office to the petitioner who according to it had not lost her seat, had not only interfered with the powers of the Speaker, but also has usurped the legislative function, despite the express provision of the Constitution stipulating a bar over jurisdiction.

The next case for examination is *Kunjukrishnan* v. *Kerala Legislative Assembly*[4]. This case, though not identical with the previous case referred to above, resembles the other in one respect. In this case also, the petition was filed only after the Speaker of the Assembly had acted upon the letter of resignation. In this case the petitioner, a member of the Kerala Legislative Assembly wrote to the Speaker on 23rd November, 1963 stating that he had resigned his membership and that his resignation might take effect from 1st December, 1963. In 26th November, 1963, the Speaker read the letter in the Assembly, announcing thereby the petitioner's resignation to take effect on 1st December, 1963. On 29th November, 1963, the petitioner wrote to the Speaker that he had withdrawn his previous letter of resignation. This letter, though received on 30th November, 1963, was not given heed to and the resignation of his membership was notified in the Gazette. The petitioner's contention was that his first letter was only an expression of an idea to resign and was not a valid resignation in writing as provided by Article 190 of the Constitution. According to him, the Gazette notification was illegal and void and he continued to be a member of the Assembly. The peculiarity of the case is that no objection to the jurisdiction of the Court was raised by the learned Advocate-General under Article 212 of the Consti-

1. A.I.R. 1952 Trav.-Co. 166 (170).
2. Basu, Commentary on the Constitution of India, IV Edn., Vol. 2, p. 559.
3. *See* Basu, *Ibid* at p. 558.
4. A.I.R. 1964 Ker. 194.

tution and the Court also never adverted to this Article. The Court held that a resignation under Article 190 (3) of the Constitution to be valid need not operate *in praesenti*; a resignation to take effect on a future specified date is well within the ambit of the Article. The withdrawal nullifies the entrustment or deposit of the letter of resignation in the hands of the Speaker rendering the resignation *non est* in the eye of law. The absence of specified provision for withdrawal of prospective resignation in the Constitution or the Rules is immaterial, as the basic principles of law and procedure apply wherever they are relevant. The seat of the member resigning does not become vacant and therefore a notification published in the Gazette about vacancy of the seat without giving any heed to the letter of withdrawal is not warranted in law, and is, therefore null and void. The Court's decision in this respect was based on the clarification it gave to certain expressions in Article 190 of the Constitution of India. The expression " addressed to the Speaker " in this Article has been interpreted to mean " conveyed to the Speaker " and not mere naming of the Speaker in the heading of the letter of resignation. And the word " *thereupon* " in the expression " shall thereupon become vacant " in the Article means " in consequence of resignation and not immediately or without delay or lapse of time."

While in *Thankamma's case*[1], in the absence of any Rules framed under Article 208 to deal with the cases of resignation, the Court said that Article 190 imposed a duty on the Speaker to make enquiry as to the genuineness of the letter of resignation, in the present case, though the Speaker acted in accordance with the rule 162 of the Kerala Legislative Assembly Rules of Procedure and Conduct of Business, the Court held that the notification issued by the Secretary, Legislative Assembly was null and void. It should be noted here that the interpretation of the Article 190 (3) and in particular the interpretation of the word " *thereupon* " to mean "in consequence of the resignation and not immediately or without delay or lapse of time " and the assumption of jurisdiction by the Court in such matters are not one and the same thing. The power to interpret the Constitution does not necessarily give the power to intervene in the conduct of business by the officers of the Legislature, when they have properly complied with the Rules of Procedure and Conduct of Business. The Court's justification for this assumption of jurisdiction is this : " The absence of a specific provision for withdrawal of prospective resignation in the Constitution or the Rules is immaterial as basic principles of law and procedure must be applied wherever they are relevant."[2] Do the basic principles of law and procedure enable the Court to widen the scope of the Constitution so as to escape the prohibition contained in the Constitution ? Does the Article 212 (2) become inoperative at a point whereat it was intended to operate ? Could the Court, by applying the " basic principles of law and procedure ", direct the Legislature to fill the gaps in the Rules framed by it ? The implication of the decision of the Court is far-reaching in effect. It is, therefore, submitted that the Court's reliance on such flimsy ground, like " the basic principles of law and procedure," in order to counter act the effect of Article 212 (*a*), would not help the Court in expounding the Constitution.

It is important to note here that the provision in Article 101 (3) of the Constitution for resignation of a seat in the Parliament is virtually identical in expression with that in Article 190 (3) and the rule for resignation made by the Parliament under Article 118 is virtually identical with rule 162 made by the Kerala Assembly. If the High Court in the present case was correct in assuming jurisdiction without any heed to the bar contained in Article 212 (2), an aggrieved member of Parliament, placed in identical circumstances, also could have recourse to the Court.

1. A.I.R. 1964 Trav.-Co. 166.
2. *M. Kunjukrishnan Nadar* v. *Hon'ble Speaker, Legislative Assembly*, A.I.R. 1964 Ker. 194 (197).

What Court he would move in order to have his seat restored? Supreme Court's Original Jurisdiction under Article 131 does not cover such cases. If the statement that the Speaker of the House of People or the Chairman of the Council of States is not a Court or tribunal, is not to be seriously contested, it may be with great certainty stated that neither the original nor the appellate jurisdiction of the Court extend to the hypothetical case of a Member of the Parliament. And no other inferior civil Court possesses such jurisdiction. Therefore, it is also humbly submitted that the Kerala High Court in the present case, apart from disregarding the inhibition contained in Article 212 (2), has usurped an essentially legislative function of the Legislature, thus rendering ineffective the separation of essential Governmental powers, on which our Constitution is based.

The decision of the Allahabad High Court in *Surat Singh* v. *Sudama Prasad*[1] remains to be examined now. The present case differs from the other two cases examined above in one important respect, *i.e.*, the writ was filed there, after the Speaker had given his decision and here writ was filed before the Speaker gave his decision as to the genuineness of the letter of resignation. In this case the first respondent, a member of the Legislative Assembly expressed his intention to resign his seat in order to achieve certain political results. In pursuance of such desire, he sent his letter of resignation, to the President, All India Congress Committee, so that he could take action on that and if necessary, forward the letter to the Speaker. The day, when the Assembly was in session, the letter of resignation without the envelope was found on the table of the Secretary, Legislative Assembly. The letter was not conveyed by the first respondent. Neither was it delivered by a messenger. The Speaker announced in the House that a letter of resignation purporting to be the letter of resignation of the first respondent was found on the table of the Secretary and he proposed to take action on the letter. But before he could complete and announce his decision on the matter, the petitioner, a member of the Assembly filed this writ under Article 226 of the Constitution praying the Court to declare that the first respondent has lost his seat in the Legislature and that rule 278 of Rules of the Legislature stipulating that Speaker shall determine any dispute as to the genuineness of the letter of resignation, should be declared *ultra vires* Articles 190 (3) and 208 (4) of the Constitution.

The Court's decision is as follows :—

The Constitution of the House at any particular point of time would depend on the question as to whether a member continues to be a member of the House or has ceased to be so at that time. In order that the matter is not left in the pale of doubt, such an act should be accompanied with certain formalities. Article 190 (3) (*b*) itself contains indications to that effect. It has prescribed the bare ingredients of the transactions of resignation, leaving details of its practical application to be worked out by the Rules framed under Article 208 by the House. After examining each of the sub-rules of the rule 278 the learned Judge held that the Rules are not violative of Article 190 (3) and are *intra vires* Article 208 (1). Could the Court decide upon the validity of the Rules, in the face of bar under Article 212 (1) ? The learned Judge in this case has not referred to this issue in his judgment. It is probable that since the power of the House of the Legislature of a State to make Rules for regulating the conduct of its procedure and conduct of its business under Article 208 is made subject to the provisions of the Constitution, the Court has assumed such a power in order to determine whether Rules framed by the Legislature are in accordance with the provisions of the Constitution or not.[2] The natural corollary of the exercise of such power by the Court is that the Court would also strike down the Rules framed by the Legislature as *ultra vires* the Constitution, if the Court considers it to be so. Such exercise of power extends no further. It would have been better if it were made clear that though the Court could strike

1. A.I.R. 1965 All. 536.

2. In *Keshav Singh* v. *Speaker, Legislative Assembly*, A.I.R. 1965 All. 349 (355) it was held that Rules cannot be struck down where it makes a provision excluding such application.

any of the Rules as *ultra vires*, the Constitution, it could not direct the Legislature to frame some new Rules, so as to bring them in conformity with the interpretation it had given. This submission is made because such direction would amount to usurpation of an essential legislative function.

The Court has, in this case, desisted from expressing any opinion on the correctness or otherwise of the law laid down in the two aforementioned cases. The Court said: "There is no procedure provided either under the Constitution or under the Rules for decision of the dispute by the Court. If the decision of the matter at that preliminary stage is to be made by the Court, the necessary result of such a procedure would be to paralyse the efficient working of the Legislature."[1] The Court further said that preliminary decision has to be given by the Speaker and that the writ petition has to be dismissed on the preliminary ground that it is premature. From the fact that the Court distinguished the former two cases from the present one on the ground that they were filed after the Speaker had given his decision and that the present case was dismissed as premature, it is made clear that the Court has given indication that it would assume jurisdiction if it considers it necessary.

None of the three cases under discussion has disclosed the possible ground for the assumption of jurisdiction in the matter relating to the resignation of a member of the Assembly. It is here proposed to explore the basis for the assumption of such a jurisdiction. The fathers of the American Constitution framed the Constitution based on the doctrine of separation of powers and in order to counteract the effect of a strict application of this doctrine, they also provided necessary checks and balances "............(*a*) department may constitutionally exercise any power whatever its essential nature, which has, by the Constitution been delegated to it, but that it may not exercise powers not so constitutionally granted, which, from their essential nature, do not fall within its division of Governmental functions, unless such powers are properly incidental to the performance by it of its own appropriate functions"[2]. This American Constitutional principle had great influence on the framers of our Constitution. "Though the Supreme Court, in the *Delhi Laws Act* (1912) *Case*,[3] agreed that our Constitution does not vest the legislative and judicial powers in so many words, the majority in effect imported the essence of the modern doctrine of separation of powers, applying the doctrines of constitutional limitation and trust. None of the organs of Government under the Constitution can, therefore, usurp the function or powers which are assigned to another organ by the Constitution, expressly or by necessary implication. On the same principle, none of the organs can divest itself of the essential functions which belong to it under the Constitution."[4] The learned Constitutional Expert, Basu further says that notwithstanding the refusal of the framers of our Constitution to introduce a rigid separation of powers in the Constitution, there is a differentiation of functions between the Executive, the Legislative and Judiciary and that no organ can constitutionally assume the powers that essentially belong to another organ. What are the respective spheres for the exercise of power by the Judiciary and the Legislature. "To declare what law is or has been is a judicial power, to declare what the law shall be is Legislative"[5]. Establishment of rules of conduct and procedure is essentially a legislative power.[6] The provisions of clause (1) of Article 208 of our Constitution is also to that effect. Could there be any *rationale* at all for the

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1. *Surat Singh Yadav* v. *Sadama Prasad Goswami*, A.I.R. 1965 All. 536 (541).
2. Whilloughby, Constitutional Law of the United States, II Edn., 1938, p. 682,
3. (1951) S.C.R. 747 : (1951) S.C.J. 527: A.I.R. 1951 S.C. 332.
4. Basu op. cit., p. 328.
5. *Ogden* v. *Blackledge*, 2 Cr. 276 quoted by Basu, *Ibid.* p. 331.
6. Willoughby op. cit., p. 681.

assumption of jurisdiction by our Courts over the matter under discussion. It is submitted that there is such a basis. The Speaker is an officer of the Legislature. Nothing prevents him from exercising an executive function when the Constitution itself expressly does so under Article 190 (3). And nothing prevents him from exercising a quasi-judicial function when the Legislature itself under its Rules impose such a duty on him. In this connection, it will be appropriate to lay down the sub-rule (5) of Rule 278 of the Rules of Procedure and Conduct of Business, Legislative Assembly, Uttar Pradesh:

"(5) If any dispute arises as regards genuineness or voluntary nature of resignation, the same shall be determined by the Speaker before action is taken under sub-rule (2) or sub-rule (4)."

The High Courts have wide powers vested in them under Article 226 of our Constitution, to exercise supervisory function over the quasi-judicial authority, whether such function is vested in an executive officer or a legislative officer. On the basis of this brief analysis, it may be stated that the Kerala High Court in *Thankamma's case*[1] and in *Kunjukrishnan's case*[2] had assumed jurisdiction in respect of matter under discussion, which is unwarranted by the provisions of the Constitution of India and that the Allahabad High Court has in *Surat Singh's case*[3] given correct indication that it would, in proper cases coming under the quasi-judicial authority of the Speaker, exercise supervisory jurisdiction and render justice.

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1. A.I.R. 1952 Trav. Co. 166.
2. A.I.R. 1964 Ker. 194.
3. A.I.R. 1965 All. 596.